Supreme Court, U.S.
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No. 95-

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1995

SOON Y. PARK,

Petitioner,

v.

HOWARD UNIVERSITY,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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98 pp

QUESTION PRESENTED

This action under title VII of the Civil Rights Act of 1964 arises from a hostile work environment to which the employer subjected petitioner because of her Korean origin. Petitioner's earlier and timely complaint to the EEOC described in detail the then most recent episode in the employer's continuing pattern of discriminatory conduct against her. The "core facts" of that complaint and of the hostile work environment claim "were interlocking" and arose "from the same nucleus of operative facts."

The question presented is whether the court below erroneously barred petitioner's title VII action for failure to exhaust administrative remedies.

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1995

SOON Y. PARK,
Petitioner

v.

HOWARD UNIVERSITY,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Soon Y. Park petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit entered in this case on December 15, 1995.

OPINIONS BELOW

The opinion of the court of appeals is reported at 71 F.3d 904 and is reproduced in the appendix hereto at page 1 ("A1"). The Memorandum-Opinion of the district court (A16) that was reversed by the court of appeals is unreported. Orders of the court of appeals denying a petition

for rehearing and a suggestion for rehearing in banc, both entered on February 12, 1996 (A10, A12), are unreported. Other opinions of the district court in this case are reported at 863 F.Supp. 14 (D.D.C., September 23, 1994) and 881 F.Supp. 653 (D.D.C., February 23, 1995).

JURISDICTION

The judgment of the court of appeals was entered on December 15, 1995, and the petition for rehearing was denied on February 12, 1996. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

This case involves application of the following language of 42 U.S.C. 2000e-5(b) and (f):

> (b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved . . . alleging that an employer . . . has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) . . . and shall make an investigation thereof.
>
> * * * *
>
> (f)(l) . . . If a charge filed with the Commission pursuant to subsection (b) . . . is dismissed . . . or [one of several actions has not been taken by the Commission] the Commission . . . shall so notify he

> person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge . . . by the person claiming to be aggrieved.

STATEMENT OF THE CASE

Proceedings in the District Court

Soon Y. Park, a member of the faculty of the College of Pharmacy at Howard University, filed this action on November 25, 1992, alleging discrimination by the University upon the basis of her sex and national origin. She alleged generally that she had "exhausted her administrative remedies." The University both denied this allegation and asserted as an affirmative defense that "Plaintiff has failed to exhaust her administrative remedies."

After a four day bench trial, the district court determined that the plaintiff's action -- although her amended complaint in form stated but a single claim -- consisted of three claims: a claim of sexual harassment, a claim for her non-selection as assistant dean for student affairs, and a claim of hostile work environment. A17. The sexual harassment claim having been previously dismissed by summary judgment (A14) and the court finding that the white male selected as assistant dean for student affairs was in fact better qualified (A25-26, pars. 28-30), the court proceeded to make detailed findings regarding hostile work environment and found that over an eight year period "[t]he conditions and privileges of plaintiff's employment at Howard have been affected seriously by discriminatory conduct" (A32), that the discriminatory conduct was "continuous" (A33), and that "the conduct of Dr. Park's supervisors was sufficiently

pervasive to amount to harassment which created a hostile work environment." A34-35. Regarding the University having discouraged her application for the position of assistant dean for student affairs and its inaction on her application once filed, the court found that she had been discriminated against on the basis of her national origin and that this was a factor in the oppressively hostile work environment. A26, pars. 29-30; A34; A51. The court further found that the defendant's discriminatory conduct and its attendant hostile environment continued after the filing of the action and through the time of trial. A26-27, pars. 31-32.

Regarding administrative exhaustion, the district court determined:

> Plaintiff filed a complaint with the District of Columbia Department of Human Rights and Minority Business Development on September 23, 1992, which was cross-filed with the United States Equal Opportunity Commission ("EEOC"). Plaintifff has exhausted her administrative remedies and the EEOC issued plaintiff a notice of her right to sue.

A28-29.

In a separate Memorandum Opinion and Order of September 23, 1994 (A37), the district court assessed damages against the University, and in a further order, of February 23, 1995 (A42), awarded an attorney fee and costs. In its fee memorandum, the court, responding to an assertion by the defendant that the claim regarding non-selection for assistant dean was discrete and separate from the claim of hostile environment, revisited and elaborated its earlier

holding on the relationship between the two claims. A43-55. More particulary, the court emphasized that the claims "arise from the same nucleus of operative facts," A43, and that "the core facts to the claim[s] of . . . denial of the assistant deanship are interlocking with, and supportive evidence of, the claim of hostile work environment," A55, n.9. In assessing the cumulative effect of this discrimination upon the plaintiff's career, the Court concluded that "Dr. Park was stripped of every professional position and privilege she had earned as a faculty member at Howard," A38.

Evidence of administrative exhaustion

Shortly before submitting a pre-complaint questionnaire to the District of Columbia Department of Human Rights and Minority Business Development on August 13, 1992, Dr. Park complained directly to several responsible officials at the University. On June 3, 1992 she wrote the Executive Vice President of the University regarding the failure of Dr. Hill, Dean of the College of Pharmacy, to address her earlier complaints concerning the College's failings in "the adminstrative advancement of female faculty of the College of Pharmacy," including the fact she "was not given EQUAL OPPORTUNITY to be considered for" the position of assistant dean. A59-60. In a note to her department chair on July 8, 1992, she requested an opportunity to discuss "1. Sexual Harrasement [sic] cases at HUH" and "2. Harrasement/blocking one's professional career at HUH." A61. In a further memorandum of July 13, 1992 to her department chair (A62)she noted that she had brought these issues to his "attention verbally and/or in writing for many years" (A62), that she had received no "meaningful response or solution" (A63), that the Dean had demonstrated lack of sensitivity, and that she was being "ignored" (A65).

On August 13, 1992 Dr. Park prepared and submitted a four page pre-complaint questionnaire to the District of Columbia Department of Human Rights and Minority Business Development on a form used by that office. A66-74. In the questionnaire, plaintiff complained she had been discriminated against by Howard on the basis of both sex and national origin. A67. She checked boxes indicating discrimination by being "Denied Promotion," by "Differential Treatment," and by "Sexual Harassment." Id. Although the form provided no box for discriminatorily hostile work environment, she attached a two-page typewritten statement detailing conduct of Howard she believed to have been discriminatory from 1985 to the date of her complaint. A71-74. She responded to a request for the name of any "representative of management" with whom she had discussed her problem by naming the vice-president of the University, the dean of her College, and the chairman of her department. A68. Asked to list the names, titles, and telephone numbers of persons she felt could provide evidence, she responded, "I will provide them on the interview day." A69. She concluded by stating, "I have documentation which substantiate that I was continually discriminated and harassed based on sex and national origin (Korean)." A74.

Plaintiff filed her formal, sworn complaint with the same office on September 23, 1992, asserting Howard had discriminated "by subjecting [her] to differential treatment in terms and conditions of employment." A75. In a blank calling for the date "on or about" which the violation occurred, plaintiff inserted "March 25, 1992 and continuing." *Id.* Under the heading "The Particulars Are," she detailed the most recent of Howard's actions that she had detailed in her pre-complaint questionnaire, namely her

non-selection for assistant dean for student affairs. A70-72. In the course of this narration, she recounted a meeting at which statements were made concerning the Dean's control of the selection, promotion, and tenure process and concluded saying, "It is my belief that I was denied the opportunity for advancement in my career because of my sex (female) and my national origin (Korean)." A72.

Reversal by the Court of Appeals

The Court of Appeals reversed the District Court on the sole ground that "Park failed to exhaust her administrative remedies for this claim before the Equal Employment Opportunity Commission ("EEOC") prior to filing suit." A2. Quoting the full text of Dr. Park's narration that appears in her EEOC complaint under the heading "The Particulars Are," the court stated that her charge "did not express or even hint at a national origin hostile work environment claim" (A5) and concluded that "Park's charge not only lacks the words 'hostile work environment,' but also lacks any factual allegations supporting such claim." A7.

With respect to the claim which Dr. Park concededly stated in her formal EEOC complaint, the court stated that "[h]er challenge to the selection of Nicholas as Assistant Dean does not incorporate the various other claims relied upon by the District Court in its finding of a hostile work environment, and the charge does not incorporate any other challenges to Howard's action." A7.

With respect to the evidence that Dr. Park fully described her "various other claims" in her pre-complaint questionnaire, the court conceded "[i]t would be possible to construe some of the wording in that statement to make out

a hostile work environment claim," but concluded that, because the questionnaire was neither sworn to nor accessible to Howard, it was "not the same as an EEOC charge." A8.

Finally, the court held that "[b]ecause Park's EEOC charge contained no claims or factual allegations that could reasonably be expected upon investigation to lead to a hostile work environment claim, . . . she failed to exhaust her administrative remedies for such a claim at the EEOC." A8-9.

REASONS FOR GRANTING THE WRIT

The writ should be granted because the Court of Appeals, in reversing the District Court's finding that the plaintiff exhausted her administrative remedies, has constructed a new rule negating the well-founded rule heretofore followed in all circuits. This new rule, which was neither fully articulated nor rationalized by the Court below, required of the plaintiff a level of legal sophistication in framing her administrative claim equal to that of an attorney -- and with consequences more drastic if she slipped than for a pleading slip by her attorney in a subsequent district court action. Since this rule is not dependent upon the facts of this particular case, it can, if unreversed, have broad impact on title VII enforcement through the courts.

In *Love v. Pullman Company*, 404 U.S. 522, 526 (1972), and again in *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 397 (1982), this Court, rejecting arguments that plaintiffs had failed to exhaust their administrative remedies under title VII of the Civil Rights Act, admonished that a technical reading of the exhaustion requirement would be "particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process."

Consistent with the admonition in *Love* and *Zipes*, the federal courts in all twelve circuits have adopted and followed a liberal rule, first formulated by the Fifth Circuit in *Sanchez v. Standard Brands, Inc.* 431 F.2d 455 (CA5 1970), for identifying a claim in district court with a particular complaint to the EEOC. The rule is that "the 'scope' of the judicial complaint is limited to the 'scope' of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." *Sanchez, supra,* at 466; and *see: Powers v. Grinnell Corp.*, 915 F.2d 34, 38 (CA1 1990); *Smith v. American President Lines, Inc.*, 571 F.2d 102, 107, n.10 (CA2 1978); *Ostapowicz v. Johnson Bronze Co.*, 541 F.2d 394, 399 (CA3 1976); *Chisholm v. United States Postal Service*, 665 F.2d 482, 491 (CA4 1981); *Equal Employment Opportunity Commission v. Bailey Co., Inc.*, 563 F.2d 439, 446 (CA6 1977); *Babrocky v. Jewel Food Co. & Retail Meatcutters*, 773 F.2d 857, 864 (CA7 1985); *Equal Employment Opportunity Commission v. Delight Wholesale Co.*, 973 F.2d 664, 668 (CA8 1992); *Green v. Los Angeles Cty. Superintendent of Sch.*, 883 F.2d 1472, 1476 (CA9 1989); *Scott v. City of Overland Park*, 595 F.Supp. 520, 526 (D.Kansas 1984); *Wu v. Thomas*, 863 F.2d 1543, 1547 (CAll 1989); *Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979, 988 (CADC 1973). Thus, the scope of an action in district court has *not* been limited to *claims* stated in an antecedent complaint to EEOC, but has been limited only by the scope of the EEOC investigation that could reasonably be expected to grow out of the EEOC charge.

The reasons for the *Sanchez* rule were stated for the court by Circuit Judge Goldberg as follows:

> Our consideration of this issue must begin with a reiteration of our conviction that procedural

> technicalities are not to stand in the way of Title VII complaints. Nothing in the Act commands or even condones the application of archaic pleading concepts. On the contrary, the Act was designed to protect the many who are unlettered and unschooled in the nuances of literary draftsmanship. It would falsify the Act's hopes and ambitions to require verbal precision and finesse from those to be protected, for we know that these endowments are often not theirs to employ.
>
> * * * *
>
> Since the Act involves "a lay-initiated proceeding," Jenkins v. United Gas Corp., 5 Cir. 1968, 400 F.2d 28, 30 n.3, "it would be out of keeping with the Act to import common-law pleading niceties to [the charge of discrimination] or in turn to hog-tie the subsequent lawsuit to any such concepts." *Id.* This Act was designed to protect a worker from becoming an industrial pariah, and his lack of literary acumen should not stymie his quest for equal employment opportunity.
>
> * * * *
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> In other words, the "scope" of the judicial complaint is limited to the "scope" of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination.

431 F.2d at 465-466.

Thus, under *Sanchez* it is the reasonably expected "scope" of the anticipated EEOC investigation that fixes the

permissible reach of the plaintiff's subsequent court action. But the rule to be applied in determining this "scope" is critical to the meaning and practical application of *Sanchez*. Heretofore, the uniform rule in defining "scope" has been that the court action "may extend to any discrimination like or related to the substance of the allegations in the [EEOC] charge and reasonably can be expected to grow out of the investigation triggered by the charge." *Equal Employment Opportunity Commission v. Delight Wholesale Co., supra,* at 973 F.2d 668, and cases cited; and *see* the opinion below (A4-5), quoting from *Cheek v. Western and Southern Life Ins. Co.*, 31 F.3d 497, 500 (CA7 1994). The court below here followed a different and unprecedented rule. Instead of considering whether investigation triggered by Dr. Park's allegations of discrimination in the University's handling her application for assistant dean could reasonably be expected to lead to her claim of hostile work environment, the Court of Appeals looked to whether she had stated within the four corners of her EEOC complaint facts supporting such a claim. Finding that she had not, it barred her claim.

The trial record here established that *had* an investigator interviewed the plaintiff concerning the particulars of her EEOC complaint, had he interviewed her department chair, had he interviewed Dean Hill, had he looked at the plaintiff's pre-complaint questionnaire, or had he examined the documents in the plaintiff's or the University's possession, he would have been plunged directly into a hostile environment claim. *Any* investigation of the defendant's mishandling of her application for the position of assistant dean for student affairs would have necessarily looked to the Dean's motive in seeking to discourage her application and failing to act upon it once submitted. And any serious inquiry would have inexorably led to the University's seven year campaign to limit her professional advancement and denigrate her status.

It would have led to the Dean's refusal to permit the chairman of a prominent college committee to resign his chairmanship in favor of the plaintiff. A24, pars. 24-25; A32-33, A34. It would have led to the Dean's failure to respond to her complaint that she had been the subject of an ethnic slur made by one of her peers to her supervisor and other of her peers. A23-25, pars. 21-22; A49-50. It would have required explanation of the inexplicable delay in her promotion to associate professor and the consequent delay in her tenure. A21-23, pars. 15-20; A32; A48-49. It would have required explanation of her being dropped for no apparent reason from another prestigious committee. A21, par. 14. It would have required explanation of her traumatic removal from her leadership role on a subcommittee in her field of specialty -- removal by the same peer who had bandied the ethnic slur. A20-21, pars. 9-13; A33; A47-48. It would have required explanation of her peremptory removal from her assignment as coordinator of a clerkship program and her replacement by a less-qualified junior faculty member. A26-27, pars. 31-31; A34; A54. In short, it would have required an EEOC investigator to look at details of all the discriminatory conduct that the district court looked at and found to establish a hostile work environment based on her Korean origin. Such investigation would not only have flowed from the need to determine the Dean's motivation in mishandling her application for the position of assistant dean for student affairs, but would have targeted the plaintiff's more general allegation in her formal EEOC complaint that she had been "denied the opportunity for advancement in [her] career because of . . . national origin." A77.

While the district court considered the evidence that should have been adduced by an investigator, the court of appeals did not. Accordingly, while the district court found

that the administrative charge and the hostile environment claim were inextricably bound and depended on the same core of operative facts, the court of appeals by-passed such considerations and looked only at the face of the administrative complaint.

Other courts of appeal reviewing district court determinations of exhaustion have been clear that the claim in district court need not have been pled, or evidence supporting it have been set out, in the preceding EEOC charge. *See Powers v. Grinnell Corp., supra,* at 915 F.2d at 38 ("An administrative charge is not a blueprint for the litigation to follow."); *Graniteville Co. v. Equal Employment Opportunity Commission*, 438 F.2d 32, 38 (CA4 1971) (purpose of charge is to initiate EEOC investigation, "not to state sufficient facts to make out a prima facie case."); *Equal Employment Opportunity Commission v. General Electric Co.*, 532 F.2d 359, 364 (CA4 1976), quoting from *Equal Employment Opportunity Commission v. Huttig Sash & Door Co.*, 511 F.2d 453, 455 (CA5 1974) ("The charge is not to be treated as a common-law pleading that strictly cabins the investigation that results therefrom . . .. The charge merely provides the EEOC with 'a jurisdictional springboard to investigate whether the employer is engaged in any discriminatory practices. '"); *McBride v. Delta Airlines*, 551 F.2d 113, 115 (CA6), *vacated on other grounds* 434 U.S. 916 (1977) (individual firing charge requires review of any racially discriminatory practices because of large and complex corporate structure).

Dr. Park's claim of hostile environment based on her Korean origin clearly "related to the substance of the allegations in [her] charge [to EEOC] and reasonably [could] be expected to grow out of the investigation triggered by the charge." *Equal Employment Opportunity Commission v.*

of hostile work environment on the basis of her Korean origin involved not only the same employer but the same agents of the same employer as did her charge of discrimination in the processing of her application for the position of assistant dean. The basis for the discrimination -- her Korean origin -- was the same in both. The time of the misconduct stated in her administrative charge was within the period of the hostile environment proven in court. The mode of discrimination -- delay, silence, rejection, and resulting diminution of her professional status through official personnel action (or inaction) -- was the same. Both the charge and the claim were "continuing" violations. The hostile environment "grew out of" specific discriminatory conduct, including the conduct described in the EEOC charge. The opposite can also be presumed -- that specific discriminatory conduct grew out of the hostile environment. It was only by insisting, as the court below did, that the claim in court be the *same* as the administrative charge could the court conclude that the claim and the charge were unrelated or that one did not grow out of the other.[1]

The decision below requires what *Sanchez* and the other courts of appeals have said should not be required. It permits -- indeed mandates -- "procedural technicalities . . .

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[1]The opinion below suggests that the court felt constrained by holdings such as *Rush v. McDonald's Corp., Inc.*, 966 F.2d 1104 (CA7 1992), and *Tart v. Hill Behan Lumber Co.*, 31 F.3d 668 (CA7 1992), from considering the relationship between a discrete discriminatory act of the employer and a broader claim of hostile environment created by a multiplicity of such acts. The court, however, failed to distinguish between cases of coemployee harassment, as in *Rush* and *Tart*, and cases such as this in which the hostile environment was created directly by the employer.

to stand in the way of Title VII complainants." *Sanchez v. Standard Brands, Inc., supra*, at 431 F.2d 455. It not only "condones" but commands "the application of archaic pleading concepts." *Id.* It fails to apply the Act "to protect the many who are unlettered and unschooled in the nuances of literary draftsmanship." *Id.* It "falsif[ies] the Act's hopes and ambitions [by requiring] verbal precision and finesse from those to be protected, . . . know[ing] that these endowments are often not theirs to employ." *Id.* It "import[s] common-law pleading niceties. . . [which] in turn . . . hog-tie the subsequent lawsuit." *Id.* It structures a rule that will leave the plaintiff a "pariah" in her workplace. *Id.* In sum, it rejects the guiding admonition of *Love* and *Zipes* that a technical reading of the exhaustion requirement is inappropriate and thereby sets itself at odds with other circuits.

CONCLUSION

The court below having erroneously departed from the rule that the scope of an action under title VII of the Civil Rights Act is limited only by the scope of the investigation reasonably expected to grow out of the EEOC complaint, the petition should be granted and, in light of the error being clear without need of further briefing or argument, the judgment below should be summarily reversed.

Respectfully submitted,

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APPENDIX

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 6, 1995 Decided December 15, 1995

No. 94-7213

SOON Y. PARK,
APPELLEE

v.

HOWARD UNIVERSITY,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 92cv02662)

Amy F. Kett argued the cause for appellant, with whom *Janet P. Holt* and *David G. Leitch* were on the briefs. *William P. Flanagan* entered an appearance.

St. John Barrett argued the cause and filed the brief for appellee.

Before: WALD, SILBERMAN and SENTELLE, *Circuit Judges.*

Opinion for the court filed by *Circuit Judge* SENTELLE.

SENTELLE, *Circuit Judge*: The District Court entered judgment for Soon Y. Park, a professor of pharmacy, on her hostile work environment claim against her employer, Howard University, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII"). Because Park failed to exhaust her administrative remedies for this claim before the Equal Employment Opportunity Commission ("EEOC") prior to filing suit, we reverse the District Court's judgment.

I. Factual Background

Soon Y. Park is a naturalized United States citizen born in South Korea. She is a tenured Associate Professor in the Department of Pharmacy Practice at Howard University's College of Pharmacy and Pharmacal Sciences. She was awarded tenure in 1987, approximately six years after joining the faculty. In her years on the faculty, she has taught courses, performed research, and been involved in several academic committees. In 1991, Park sought the recently vacated position of Assistant Dean for Student Affairs in the College of Pharmacy, but Bertram Nicholas, a white American, was chosen for the post. Park filed a charge with the District of Columbia Department of Human Rights and the EEOC which claimed that Howard had discriminated against her based on her sex and her national origin in selecting Nicholas for the Assistant Dean position. After receiving a Notice of Right to Sue from the EEOC, Park filed this lawsuit on November 25, 1992. The complaint alleged sex and national origin discrimination in Howard's selection of Nicholas for the Assistant Dean position. On December 11, 1992, Park filed an Amended Complaint, in which she alleged an "atmosphere of sexual harassment" at Howard. Am. Compl. at 3. Howard moved for partial summary judgment on the sexual harassment allegation, and the District Court granted this motion "on the grounds that the Amended Complaint contains no discrete claim of sexual harassment." Order of Oct. 28, 1993.

At trial, the District Court construed the remains of the Amended Complaint to allege two separate charges: one for sex and national origin discrimination in the Assistant Dean selection process, and one for "[a]n on-going pattern of discrimination against plaintiff based on her sex *and* national origin which created a hostile work environment." Mem. Op. of Apr. 8, 1994 at 2 (emphasis in original). The court also held that Park had fully exhausted her administrative remedies at the EEOC as to both claims. *Id.* at 14. Park lost on the discrimination claim because the District Court concluded that Howard "had a legitimate and nondiscriminatory reason" for the selection of Nicholas as Assistant Dean—Nicholas held a doctorate in higher education administration and had prior assistant deanship experience, whereas Park met neither of these criteria. *Id.* at 10–11, 14–16, 15. But the District Court did conclude that Park had been "subject to continuous discriminatory conduct" that was "sufficiently pervasive to amount to harassment which created a hostile work environment" based on Park's national origin (but not based on her sex). *Id.* at 19, 20–21. As evidence of the hostile work environment, the court cited (1) two occasions where Park was replaced by a black colleague on an administrative assignment, (2) mishandling of two other personnel decisions, and (3) one derogatory comment about an applicant for a faculty position who had an Asian name, and, incidentally, about Park herself. *Id.* at 17–20. Although some of this activity occurred before the 300-day limitations period, the court held that it constituted a "continuing violation," eventually awarding Park $150,000 in compensatory damages. *Id.* at 21 n.5; Mem. and Order of Sept. 23, 1994. Howard appeals from this judgment on multiple grounds.

II. Legal Analysis

Park prevailed in the District Court on her claim of a hostile work environment based on her national origin. Discriminatory conduct results in a hostile work environment when it is "so severe or pervasive that it create[s] a work environment abusive to employees because of their race, gender, religion, or national origin," thus offending "Title

VII's broad rule of workplace equality." *Harris v. Forklift Sys., Inc.*, 114 S. Ct. 367, 371 (1993). Although there is no requirement of psychological harm, *id.*, it remains true that "casual or isolated manifestations of a discriminatory environment, such as a few ethnic or racial slurs, may not raise a cause of action." *Bundy v. Jackson*, 641 F.2d 934, 943 n.9 (D.C. Cir. 1981). In this case, the District Court justified its finding of a hostile work environment by pointing to Park's dismissal from committee assignments, a derogatory comment by one of Park's colleagues about a job applicant with an Asian name and about Park herself, Howard's failure to notify Park of her failure to win the Assistant Dean post, and Park's replacement as coordinator of a student clerkship program. Howard maintains that these allegations, even if true, do not constitute sufficient evidence to justify a finding of a hostile work environment. However, as our analysis will show, Park loses on another threshold question—she failed to exhaust her administrative remedies at the EEOC for the hostile work environment claim. It is therefore unnecessary to consider Howard's arguments about the sufficiency of the evidence.

Title VII requires that a person complaining of a violation file an administrative charge with the EEOC and allow the agency time to act on the charge. Only after the EEOC has notified the aggrieved person of its decision to dismiss or its inability to bring a civil action within the requisite time period can that person bring a civil action herself. 42 U.S.C. § 2000e–5(f)(1) ("[W]ithin ninety days after the giving of [a notice of right to sue] a civil action may be brought against the respondent named in the charge."); *see also Williams v. Washington Metro. Area Transit Auth.*, 721 F.2d 1412, 1413 n.1 (D.C. Cir. 1983); *Laffey v. Northwest Airlines, Inc.*, 567 F.2d 429, 472 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978); *Babrocky v. Jewel Food Co.*, 773 F.2d 857, 863 (7th Cir. 1985) (all construing the exhaustion of administrative remedies requirement). A Title VII lawsuit following the EEOC charge is limited in scope to claims that are "like or reasonably related to the allegations of the charge and growing out of such allegations." *Cheek v. Western and Southern*

Life Ins. Co., 31 F.3d 497, 500 (7th Cir. 1994) (citations and internal quotation marks omitted). At a minimum, the Title VII claims must arise from "the administrative investigation that can reasonably be expected to follow the charge of discrimination." *Chisholm v. United States Postal Service*, 665 F.2d 482, 491 (4th Cir. 1981).[1] The administrative charge requirement serves the important purposes of giving the charged party notice of the claim and "narrow[ing] the issues for prompt adjudication and decision." *Laffey*, 567 F.2d at 472 n.325 (internal quotations and citation omitted). Although it is true that the administrative charge requirement should not be construed to place a heavy technical burden on "individuals untrained in negotiating procedural labyrinths," *Loe v. Heckler*, 768 F.2d 409, 417 (D.C. Cir. 1985), it is also true that "the requirement of some specificity in a charge is not a 'mere technicality.'" *Rush v. McDonald's Corp.*, 966 F.2d 1104, 1111 (7th Cir. 1992). A court cannot allow liberal interpretation of an administrative charge to permit a litigant to bypass the Title VII administrative process. *Ostapowicz v. Johnson Bronze Co.*, 541 F.2d 394, 398 (3d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977).

Although Park filed an administrative charge, it did not express or even hint at a national origin hostile work environment claim. The particulars of her charge read, in their entirety:

> 1. I was employed by the Respondent on August 15, 1981, as an Assistant Professor, earning a salary of $27,500 pe[r] annum. I am still employed by the Respondent, as an Associate Professor, earning a salary of approximately $56,300 per annum.

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[1] This is not to suggest that there will always be an administrative EEOC investigation after a charge. Many cases are not investigated at all and the EEOC simply sends a right-to-sue letter to the charging party. We, and the Fourth Circuit, only intend that claims within a Title VII suit must be such as could reasonably be expected to be encompassed within an administrative investigation if one did follow the charge.

2. The Respondent has not articulated a valid reason for discriminating against me.

3. It is my belief that I was discriminated against on the bases of my sex (female) and national origin (Korean) for the following reasons:

A. In May or June 1991, Dr. Vincent G. Teling, (Associate Dean of Academic Affairs–India), and Dr. Olusanya (Chairman–Nigeria) asked me if I was interested in the position of Assistant Dean for Student Affairs when it became vacant. I said that I would be interested. I was told I would be recommended for the position to Dr. Wendell T. Hill, Dean (America).

B. The position became officially vacant in August or September 1991.

C. I applied for the position in writing to Dean Hill on October 19, 1991. I did not receive a reply.

D. On March 25, 1992, I became aware that the position of Assistant Dean for Student Affairs was held by Dr. Bertlam [sic] Nicholas (American male). I became aware of this by [a] memorandum that was written by him on the above stated date. An official announcement stating that Dr. Nicholas filled this position has not been made as of 09/23/92.

E. On June 2, 1992, I wrote a memorandum to Dean Hill, asking him why I was not interviewed or selected for the position in question, which I believe I was qualified for.

F. On July 23, 1992, in a meeting this statement was said: Those faculty members who hold administrative positions in the Dean's office, specifically Assistant Dean(s) and Associate Dean(s) do not have to go through the college's Appointment, Reappointment, Promotion and Tenure Committee. The Dean himself will "take care" of the promotion and tenure process and award these administrative faculty members the next higher rank and/or tenure.

G. Statements such as the above lead me to believe that Dean Hill can place anyone in a position that he wants. There is not an administrative process in the Dean's office that an employee can go through to apply for a vacant position.

H. It is my belief that I was denied the opportunity for advancement in my career because of my sex (female) and my national origin (Korean).

District of Columbia Dep't of Human Rights and Minority Business Development Complaint in the Matter of Soon Y. Park v. Howard University 1–2 (Sept. 23, 1992).

Park's charge not only lacks the words "hostile work environment," but also lacks any factual allegations supporting such a claim. Her challenge to the selection of Nicholas as Assistant Dean does not incorporate the various other claims relied upon by the District Court in its finding of a hostile work environment, and the charge does not contain any other challenges to Howard's actions. The bald statement that "[i]t is my belief that I was denied the opportunity for advancement in my career because of ... my national origin" cannot be read to encompass a hostile work environment claim. As the Seventh Circuit has noted, "[s]ome detail, beyond a statement that 'I believe I have been discriminated against because of my race, Black' is necessary to allow the agency to perform its statutory duty" in regard to a harassment claim. *Rush*, 966 F.2d at 1111. "[T]he goals behind the requirement of prior resort to administrative relief would be frustrated if the filing of a general charge with the EEOC would open up the possibility of judicial challenges to any related conduct that took place in connection with the employment relationship." *Id.* at 1110. Other courts have reached the same result. *See, e.g., Tart v. Hill Behan Lumber Co.*, 31 F.3d 668, 672–73 (8th Cir. 1994); *Prizevoits v. Indiana Bell Tel. Co.*, 882 F. Supp. 787, 791–92 (S.D. Ind. 1995); *Riley v. Technical and Management Servs. Corp.*, 872 F. Supp. 1454, 1459 (D. Md. 1995); *Cabiness v. YKK (USA), Inc.*, 859 F. Supp. 582, 586–87 (M.D. Ga. 1994); *Reese v. Goodyear Tire & Rubber Co.*, 859 F. Supp. 1381, 1387 (D. Kan. 1994); *Revis*

v. Slocomb Indus., Inc., 814 F. Supp. 1209, 1219 (D. Del. 1993); *Ghahramani v. BASF Corp.*, 755 F. Supp. 708, 710–11 (M.D. La. 1991); *Baltzer v. City of Sun Prairie/Police Dep't*, 725 F. Supp. 1008, 1019 (W.D. Wis. 1989); *Torriero v. Olin Corp.*, 684 F. Supp. 1165, 1170 (S.D.N.Y. 1988).

Park's only other possible argument is that we should rely on the contents of her "Private Sector Employment Pre-Complaint Questionnaire" which she completed for the District of Columbia Department of Human Rights several weeks before filing her charge with the EEOC. She attached to her pre-complaint questionnaire a typed statement detailing Howard's allegedly discriminatory actions against her. It would be possible to construe some of the wording in that statement to make out a hostile work environment claim. However, the pre-complaint questionnaire is not the same as an EEOC charge—it even states on its face that "[t]here is no guarantee that the information submitted will constitute a basis for filing a formal complaint." District of Columbia Dep't of Human Rights Private Sector Employment Pre-Complaint Questionnaire at 1 (Aug. 13, 1992). Additionally, Title VII requires charges to be sworn, 42 U.S.C. § 2000e–5(b), and the pre-complaint questionnaire was not. *See Hodges v. Northwest Airlines, Inc.*, 990 F.2d 1030, 1032 (8th Cir. 1993) (holding that an unsworn EEOC questionnaire "did not constitute a valid charge under Title VII" until it was signed under oath). Finally, there is no evidence that Howard or the EEOC ever had access to the questionnaire, so it could not have fulfilled the purpose of the required administrative charge. "To treat Intake Questionnaires willy-nilly as charges would be to dispense with the requirement of notification of the prospective defendant, since that is a requirement only of the charge and not of the questionnaire." *Early v. Bankers Life and Casualty Co.*, 959 F.2d 75, 80 (7th Cir. 1992).

III. Conclusion

Because Park's EEOC charge contained no claims or factual allegations that could reasonably be expected upon investi-

gation to lead to a hostile work environment claim, we hold that she failed to exhaust her administrative remedies for such a claim at the EEOC. Her civil claim for a hostile work environment is therefore barred. Accordingly, we reverse the District Court's judgment in favor of Park. Howard raises additional arguments in opposition to the District Court's ruling which we have not addressed, but because of our holding that Park failed to exhaust her administrative remedies for the hostile work environment claim, we find it unnecessary to consider those other arguments.

Reversed.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-7213

Soon Y. Park,

Appellee

v.

Howard University,

Appellant

Appeal from the United States District
Court for the District of Columbia
(No. 92cv02662)

Before: Wald, Silberman and Sentelle,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

ORDERED and ADJUDGED, by the Court, that the judgment of the District Court appealed from in this cause is hereby reversed, in accordance with the Opinion for the Court filed herein this date.

Per Curiam

FOR THE COURT

Mark J. Langer, Clerk

BY: /s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk

Date: December 15, 1995

Opinion for the Court filed by Circuit Judge Sentelle.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-7213 September Term, 1995
USDC CV 92-02662

Soon Y. Park,

Appellee,

v.

Howard University,

Appellant

BEFORE: Wald, Silberman and
Sentelle, Circuit Judges

ORDER

Upon consideration of appellee's petition for rehearing filed January 16, 1996, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-7213 September Term, 1995
USDC CV 92-02662

Soon Y. Park,

Appellee,

v.

Howard University,

Appellant

BEFORE: Edwards, Chief Judge, Wald, Silberman, Buckley, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, and Tatel, Circuit Judges

ORDER

Upon consideration of appellee's Suggestion for Rehearing In Banc, and the absence of a request by any mamber of the court for a vote, it is

ORDERED that the suggestion be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk

Circuit Judge Tatel did not participate in this order.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOON PARK,	)	
Plaintiff	)	
	)	
v.	)	C. A. No. 92-2662
	)	
HOWARD UNIVERSITY,)		
Defendant	)	

ORDER

In accordance with the rulings issued at the pretrial conference held in open court on October 27, 1993, plaintiff's motion for reconsideration of Magistrate Judge Kay's order denying plaintiff's motion to compel is denied. Defendant's motion for partial summry judgment is granted on the grounds that the Amended Complaint contains no discrete claim of sexual harassment. To the extent defendant seeks to preclude plaintiff from introducing any evidence of harassment at trial, the Court reserves ruling for the trial juge.

Additionally, the parties are directed to meet in the near future to discuss potential stipulations. Finally, the parties are directed to file at least three business days prior to trial an updated list of proposed stipulations and exhibits.

SO ORDERED.

28th October, 1993.

/s/ Thomas F. Hogan
Thomas F. Hogan
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOON Y. PARK,	)	
	)	
Plaintiff,	)	Civil Action
	)	
v.	)	No. 92-2662-OG
	)	
HOWARD UNIVERSITY,	)	
	)	
Defendant.	)	

St. John Barrett, Washington, D.C., for plaintiff.

Susan L. Riley, Senior Associate General Counsel, Howard University, Washington, D.C., for defendant.

MEMORANDUM-OPINION

The plaintiff, Soon Y. Park, is a naturalized female citizen of the United States who was born in South Korea. The defendant, Howard University ("Howard"), employs Dr. Park in its College of Pharmacy and Pharmacal Science. The present action is brought under title VII of the Civil Rights Act, § 42 U.S.C. § 2000e, alleging that defendant has discriminated against plaintiff in her employment both on the basis of her national origin and her sex.

In an order of October 28, 1993, United States District Judge Thomas Hogan granted defendant's motion for partial summary judgment "on the grounds that the Amended Complaint contained] no discrete claim of

sexual harassment." Order dated October 28, 1993 (Hogan, J.). Judge Hogan also specifically reserved to the trial court the decision as to the introduction of any evidence of harassment. Id. The Court allowed testimony as to the charges of sexual harassment for the purpose of ruling on the admissibility of such evidence.

The Court reads plaintiff's Amended Complaint as alleging three complaints: 1) Sexual harassment (Amended Complaint ¶¶ 8-14); 2) That defendant discriminated against plaintiff because of sex and nation of origin in not selecting plaintiff as Assistant Dean for Student Affairs (Id. ¶¶ 1, 20-25); and 3) An on-going pattern of discrimination against plaintiff based on her sex and national origin which created a hostile work environment. (Id. ¶¶ 8 (sentence 2), 14, 25).[1] The Court interprets Judge Hogan's order as granting summary judgment as to the complaint of sexual harassment only. Nothing in Judge Hogan's order precludes the complainant from showing a hostile work environment evidenced by sexual harassment generally.

Trial by the Court commenced on November 15, 1993, and concluded on November 18, 1993. The parties thereafter submitted, in addition to their post-trial briefs and memoranda, proposed findings of fact and conclusions of law. The Court's findings of fact and conclusions of law

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[1] Under Federal Rule of Civil Procedure 8, a complaint must give the opposing party "fair notice of what plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 78 S. Ct 99 (1957). Despite defendant's statements to the contrary, plaintiff's Amended Complaint clearly makes a claim of an on-going pattern of discrimination and harassment which created a hostile work environment. Amended Complaint ¶ 8 (sentence 2), 14, 25.

are based on the Court's evaluation of the credibility of the witnesses and exhibits received in evidence.

FINDINGS OF FACT

1. The Court finds plaintiff to be a credible witness whose demeanor and integrity impressed the Court. The plaintiff graduated summa cum laude from the Howard University College of Pharmacy in 1978. Plaintiff's Exhibit ("Pl. ex.") 1. In 1979, plaintiff left a job as a pharmacist at Suburban Hospital to become a drug information specialist at Howard. The drug information position at Howard was a new service of the College of Pharmacy which Dr. Park helped establish and define. Plaintiff was employed in this role for approximately one year.

2. Dr. Park left Howard to attend Mercer College. At Mercer, plaintiff completed the program and was awarded a Doctor of Pharmacy degree.

3. Plaintiff was regarded highly at Howard as demonstrated by her being rehired at Howard without a formal on-campus interview. Pl. ex. 5. In a letter offering employment, Dean Wendell T. Hill of the College of Pharmacy noted plaintiff's interest in infectious diseases and stated that plaintiff would be given the opportunity to develop an antibiotic Drug Utilization Review program at Howard. Pl. ex. 6. In 1981, Dr. Park accepted employment as an Assistant Professor at the College of Pharmacy. Pl. ex. 6-7.

4. In addition to teaching and formal lectures, Dr. Park's duties included practice sites where students on medical, pharmacal, and dental rounds were instructed by Dr. Park and other hospital teachers in clinical drug

therapy. Plaintiff was successful in establishing practice sites for Howard students both in and outside Howard University Hospital. Pl. ex. 9, 64, 91, 112.

5. Plaintiff's practice sites involved infectious diseases and the use of antibiotics. Dr. Park has a career interest in the utilization of antibiotics. Plaintiff's colleagues were aware of Dr. Park's specialization in the use of antibiotics.

6. Dr. Park took a leading role in the review of antibiotic drug utilization. Pl. ex. 75. Plaintiff received commendations from the Dean of the College of Pharmacy and Pharmacal Science, Dr. Wendell T. Hill, for her research efforts and was appointed to the research advisory committee. Pl. ex. 80, 103.

7. The initial focus of plaintiff's research was on a class of antibiotics known as cephalosporins. Dr. Park implemented the drug utilization review of Howard's use of cephalosporins. Dr. Park produced the memoranda notifying members and invitees of the progressive development of the cephalosporin review committee. Pl. ex. 12. Plaintiff organized, recorded the minutes of and presided over this committee. Pl. ex. 13.

8. Recommendations of this committee were adopted by Howard University Hospital. Pl ex. 21. Dr. Park was recognized and commended for her cephalosporin research on several occasions. Pl. ex. 16 (Mr. Terry Trudeau, Acting Chairman of Department of Pharmacy Practice); Pl. ex. 19 (Dr. Robert Malone, Director of Pharmaceutical Services); and Pl ex. 23 (Dean Hill).

9. The Pharmacy and Therapeutics ("P&T") Committee at Howard was chaired by Dr. Robert E.

Taylor. Pl. ex. 12. Drug utilization review, including Dr. Park's research, was conducted under the auspices of the P&T committee.[2] An antibiotic usage advisory ad hoc subcommittee was established by Dr. Park to review Howard's utilization of antibiotics.

10. Dr. Park was the prime mover in the genesis of the ad hoc subcommittee. Plaintiff called the meetings, set the agenda, presided over and produced written summaries of the ad hoc subcommittee on antibiotics. Pl. ex. 20, 22, 40. In April 1986, Dr. Olu Olusanya, Acting Chairman, Department of Pharmacy Practice, commended plaintiff for her research and the "invaluable information" she had compiled as a result of the antibiotic subcommittee. Pl ex. 41.

11. In June, 1986, plaintiff was informed in a meeting with Dr. Olusanya and Dr. Jerome Pittman that she might

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[2] Plaintiff's alleged complaint of sexual harassment involves Dr. Taylor. Defendant objected to the introduction of this testimony. Tr. at 87. Judge Hogan's order granted partial summary judgment as to the claim of sexual harassment. Judge Hogan reserved to the trial judge the ruling as to the admissibility of this evidence. Order of October 28, 1993. The Court allowed testimony as to the charges of sexual harassment for the purpose of ruling on the admissibility of such evidence generally as it related to the condition of the work place. Id. As evidence of discrimination, plaintiff testified that she was excluded from participation on the P&T committee. Dr. Park also testified that her research on drug utilization of antibiotics was inhibited by the administration at Howard and through her exclusion from the P&T committee. Id. at 115. Pl. ex. 94, 104. The allegations of discrimination based on sex and nation of origin are intertwined because Dr. Taylor was chairman of the P&T committee and one of the alleged sexual harassers. The Court rules that this evidence is admissible only to the claims of hostile work environment and discrimination based on nation of origin.

be removed from the antibiotics subcommittee. Dr. Park stated that she did not wish to be separated from her established practice sites in infectious diseases and from the antibiotic subcommittee. Pl. ex. 49. Plaintiff's understanding was that she was to be removed to make room for a new faculty member Dr. Mark Eggleston, an African-American student of Dr. Park who graduated recently. Pl. ex. 56.

12. On December 12, 1986, plaintiff received a memorandum from Dr. Pittman requesting Dr. Park to attend a meeting at which Dr. Olusanya and Dr. Eggleston would be present. Id. At that meeting, Dr. Park was informed that she would be replaced by Dr. Eggleston as coordinator of the subcommittee.

13. No testimony was adduced by defendant to explain the basis for defendant's action. Nor was the Court favored with any testimony showing that Dr. Eggleston was more qualified.

14. All of Dr. Park's responsibilities and assignments on the antibiotic subcommittee and the P&T committee effectively were terminated. Plaintiff sought clarification of her position on the P&T committee without success. Pl. ex. 94, 104. The Court finds that as a result of Dr. Park's diminished role at Howard, plaintiff's participation in her specialty and her career goals were hindered. The Court also finds that plaintiff's professional standing in the medical community and at Howard was depreciated as a result of her removal.

15. In August of 1984, plaintiff was eligible for promotion from assistant professor to associate professor. In the summer of 1985, plaintiff discussed the possibility

of promotion with Dr. Terry Trudeau, the chairman of the department. Pl. ex. 29. Dr. Trudeau told plaintiff to collect the needed papers and apply. Id. In October, 1985, plaintiff received letters of recommendation from Dr. Vinod Mody, Professor of Medicine, Robert Malone, Director of Pharmacy Services, and Dr. Gloria Nichols, President of Howard University Pharmacy Alumni Association. Pl. ex. 30.

16. Plaintiff expressed concern over her languishing application. Pl. ex. 32-34. On January 14, 1986, Dr. Park received a letter from Dr. Olusanya stating that her promotion was under consideration. Pl. ex. 35. The application for promotion of Dr. Jerome Pittman, an African-American male who applied after plaintiff, was under consideration at the same time. Plaintiff unsuccessfully attempted to obtain copies of the minutes of the Executive Committee which considered promotions. Pl. ex. 36.

17. In October of 1985, plaintiff had requested of Dr. Taylor, then chairman of the P&T committee, a letter of recommendation. Pl. ex. 29. Plaintiff received a letter of recommendation from Dr. Taylor dated February 5, 1985. Pl. ex. 38. The date on the letter of recommendation is incorrect because plaintiff had not applied in February of 1985. The Court finds the letter was written in 1986, months after Dr. Park's request.

18. On January 17, 1986, plaintiff received a request for additional documentation from Dr. Olusanya. Pl. ex. 37. Dr. S. M. Siram, Associate Professor and Director of the Trauma Center/Surgical Intensive Care Unit and Dr. Wayne Grieves, Chief of the Infectious Diseases division, recommended Dr. Park for promotion. Pl. ex. 43, 47.

19. On September 30, 1986, Dr. Park's application was rejected again for a lack documentation. Pl. ex. 53. Plaintiff was told by Dr. Olusanya that her application was the first to be considered in accordance with new criteria for promotion. Dr. Jerome Pittman was promoted in the interim. Plaintiff requested a copy of Dr. Pittman's application to use it as an example of a proper application. Despite the practice at Howard of sharing such applications, plaintiff was not provided with Dr. Pittman's application.

20. Plaintiff was promoted to associate professor effective August 15, 1987, almost two years after applying in October 1985. Pl. ex. 63. The Court finds that plaintiff was provided with no adequate explanation as to the reason for the delay in her promotion. The Court also finds defendant's explanation was not credible that the process was delayed because new criteria was utilized regarding promotions. If there had been a timely consideration of plaintiff's promotion application and it had timely been processed, then her increase in salary would have been effective no later than August 15, 1986, rather than August 15, 1987. The Court finds that plaintiff's loss of pay by reason of the delay is $1,875. Pl ex. 59, 63.

21. A hostile attitude towards Asian-Americans existed at Howard. On January 12, 1988, Dr. Suzi Ushiyama, a Japanese-American female, applied for a faculty position at Howard. Pl. ex. 71. Dr. Pittman said of Dr. Ushiyama that because she was an Oriental, she would probably have an anti-collegial attitude like Dr. Park. Pl ex. 75.

22. Plaintiff notified Dean Hill of the remark which she believed was unethical, racist and illegal. Id. Dr. Carlton

P. Alexis, Interim Vice President for Health Affairs, advised Dean Hill to inform Dr. Park in writing of the university's equal opportunity policy. Pl. ex. 79. The Court finds that Dr. Park received no information about Howard's equal opportunity policy from Dean Hill. The Court also finds that the plaintiff was never informed of any action taken by Howard to address the impropriety of Dr. Pittman's comment. Dr. Ushiyama was not hired by Howard.

23. At two meetings in the summer of 1991, plaintiff learned from Dr. Vasant G. Talang, the Associate Dean of the College of Pharmacy, that the position of Assistant Dean of Students soon would be vacant. Dr. Talang also informed Dr. Park that he wished to recommend her for the chairmanship of the Doctor of Pharmacy ("Pharm. D.") research committee. Plaintiff expressed interest in both of these positions to Dr. Talang. Pl. ex. 119. The Court finds Dr. Talang's testimony credible and persuasive.

24. Dr. Talang, who was the research chairman at the time, testified that he asked Dr. Park if she was interested in the chairmanship in order to find a replacement for himself. Dr. Talang testified that he met with Dean Hill. Dean Hill decided not to change the structure of the administration at that time. On February 24, 1992, plaintiff wrote Dr. Talang in reference to the chairmanship of the Pharm. D research committee. Pl. ex. 119. Dr. Talang's written response of March 26, 1992 simply stated that there would be no change in the status of the committee at that time. Pl. ex. 124.

25. Plaintiff addressed a follow-up memorandum to Dr. Talang requesting an explanation for what she perceived was an oral offer of the chairmanship that was later

rescinded. Pl. ex. 125. The Court finds that no explanation was afforded to plaintiff.

26. On October 19, 1991, plaintiff wrote Dean Hill expressing interest in the position of Assistant Dean for Student Affairs. Pl. ex. 117. Plaintiff shared her interest in the position with Doctors Talang and Olusanya. After she had not heard from Dean Hill in four months, Dr. Park again wrote Dean Hill inquiring about the proper procedure for consideration. Pl. ex. 120. Plaintiff did not learn that Dr. Bertram Nicholas was given the assistant deanship until receiving a memorandum which identified him as Assistant Dean for Student Affairs. Pl. ex. 126.

27. Under the Articles of Organization of the College of Pharmacy, the assistant deans at Howard serve at the will of the dean. Defense exhibit ("D. ex.") 2. The appointment of an assistant dean is for one year. Id. Although one is not guaranteed reappointment, an assistant dean is eligible for, and the established practice at Howard favors, reappointment.

28. Dr. Nicholas, a Caucasian male, had more impressive qualifications for the position of assistant dean of students than plaintiff. When Dr. Nicholas told Dr. Park that he was considering applying for the assistant deanship, plaintiff testified that she told him she believed he would be a good candidate. Dr. Nicholas holds a doctorate in higher education administration. He previously had served as Assistant Dean of Student Affairs at the Massachusetts College of Pharmacy. As Assistant Dean for Student Affairs, Dr. Nicholas was responsible for overseeing all student activities and issues. Dr. Nicholas also served six years as Chairman of the Department of Pharmacy at Massachusetts College.

29. The Court credits the testimony of Dr. Talang that Dr. Nicholas was selected over Dr. Park because he had previous experience as an assistant dean of student affairs and that his experience made him a better qualified candidate. The Court also finds that plaintiff was discouraged from applying for the job by Dean Hill. The Court finds that no serious consideration was afforded plaintiff for the position even though she was well qualified in the opinion of Dr. Talang. Defendant's proffer that plaintiff was not considered because of her interest in research is inconsistent with defendant's removal of plaintiff from the chairmanship of the antibiotics research subcommittee.

30. Dr. Talang testified that plaintiff was qualified for the assistant deanship. Dr. Park was a successful professor and had established an impressive relationship with her students. Pl. ex. 155. The pharmacy students of Howard had presented the plaintiff with five awards and plaques in recognition of her work as a faculty member. Id. Plaintiff's excellent rapport with the students and the high marks from her colleagues acknowledge Dr. Park's impressive qualifications for the position. The Court finds Dr. Park was afforded no explanation why Dr. Nicholas was selected over her. Plaintiff was not even informed of Dean Hill's selection of another candidate despite Dean Hill's knowledge of plaintiff's interest in the position. Pl. ex. 117, 120, 126.

31. Plaintiff served as the coordinator of the Pharm. D. clerkship program from 1986 to 1992. In 1992, plaintiff was informed that effective the next academic calendar year the position of coordinator for the Pharm. D clerkship would be assigned to someone else. As of April

1993, the clerkship coordinator position was assigned to another faculty member.

32. Regina Carson, an African-American female and junior faculty member, was the coordinator of clerkship for the Bachelor of Science program. Ms. Carson was made coordinator for both the Pharm. D. and B.S programs. The defendant decided to unify the coordination of both programs under one person. Ms. Carson had no teaching qualifications as did Dr. Park. The Court finds defendant's decision to make Ms. Carson the coordinator of the Pharm. D. program was discriminatory. The Court also finds that defendant's poor handling of the process further aggravated an environment created by defendant. Plaintiff effectively had been removed from the antibiotic subcommittee and the P&T committee. Now, Dr. Park was denied additional responsibilities.

33. The Court finds that the actions taken by defendant - the effective removal of plaintiff from the P&T committee and the ad hoc subcommittee, the delay in plaintiff's promotion, the unaddressed hostile comments by Howard faculty against Asian-Americans, the withdrawal of the offer of the chairmanship of the Pharm. D. Research Committee and the refusal to consider plaintiff's application for the assistant dean position - and in light of pretextual reasons or absence of reasons by defendant for these actions, were taken because plaintiff is Korean-American.

34. The actions of defendant has caused Dr. Park psychological injury, resulting in physical symptoms for which she sought and received medical treatment. The Court credits the testimony of Dr. Richard Parker, plaintiff's husband, that the injury inflicted by defendant

upon plaintiff started affecting her psychological well-being in 1986.

35. Dr. Lewis Marshal testified that plaintiff suffered from neuro-dermatitis and other stress-related symptoms, including headaches and dizzy spells. Plaintiff was treated by two dermatologists, a neurologist and a psychiatrist in addition to Dr. Marshall.

36. The Court accepts the testimony of Dr. Joan Sealy, a psychiatrist, who testified that plaintiff suffered from major depression. Dr. Sealy testified that defendant's actions seriously have affected Dr. Park's relationship with her professional peers and has made it more difficult for her to perform effectively in her employment. The Court finds that plaintiff's psychological injury continues to the present and will continue until a catharsis is achieved by this Court's entry of judgment.

37. The reasonable value of medical services plaintiff received is $6,965. Pl. ex. 156-60.

38. The Court also finds that plaintiff and defendant are able to valuate a reasonable compensation for the intangible injuries described in the preceding findings.

CONCLUSIONS OF LAW

This Court has jurisdiction of this action under 28 U.S.C. § 1331 and under 42 U.S.C. §2000e-5(e)(3). Plaintiff filed a complaint with the District of Columbia Department of Human Rights and Minority Business Development on September 23, 1992, which was cross-filed with the United States Equal Opportunity Commission ("EEOC"). Plaintiff has exhausted her

administrative remedies and the EEOC issued plaintiff a notice of her right to sue.

A. Claim of Sexual Harassment

In an order of October 28, 1993, United States District Judge Thomas Hogan granted defendant's motion for partial summary judgment "on the grounds that the Amended Complaint contain[ed] no discrete claim of sexual harassment." Order dated October 28, 1993 (Hogan, J.).

B. Plaintiff's Nonselection as Assistant Dean for Student Affairs

Plaintiff's second claim alleges disparate treatment in the selection of an Assistant Dean of Student Affairs at the Howard College of Pharmacy. In St. Mary's Honor Center v. Melvin Hicks, Justice Scalia, writing for the majority, provides a precise road map for the Court to follow through the shifting burdens allocated in the presentation of proof in Title VII discriminatory-treatment cases. St. Mary's Honor Center v. Melvin Hicks, 509 U.S. ---, 113 S. Ct. 2742 (1993). The plaintiff has the burden of proving that defendant intentionally discriminated against her. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

The Supreme Court, interpreting its decision in McDonnell Douglas, stated: "[T]he plaintiff in such a case, we said, must first establish, by a preponderance of the evidence, a "prima facie" case of racial discrimination." St. Mary's, 113 S. Ct. at 2746-47. Dr. Park has established a prima facie case by showing (1) she is Korean-American which is a racial minority at Howard; (2) she applied and

was qualified for the job of assistant dean for which Howard was accepting applicants; (3) despite her qualifications, she was rejected; (4) the position remained open as Howard searched for another applicant ultimately the position was filled by Dr. Nicholas, a white male. Id.

The establishment of a prima facie case creates a presumption that the employer unlawfully discriminated against the plaintiff. Id. Now, defendant has the burden through the introduction of admissible evidence to clearly set forth that the adverse employment actions were taken "for a legitimate, nondiscriminatory reason." Id. (citing Texas Dept. Community Affairs v. Burdine, 450 U.S. 248, 254-255 (1981)). This Court, acting as trier of fact in a bench trial, found that Howard had a legitimate and nondiscriminatory reason for the hiring of Dr. Nicholas as Assistant Dean for Student Affairs. Dr. Nicholas was better qualified than plaintiff in terms of education and experience for the assistant deanship.

Plaintiff through her case-in-chief and cross-examination did not overcome the ultimate burden of persuading the Court that Howard's proffered reason was not the true reason for the employment decision and that she was intentionally discriminated against. St. Mary's, 113 S. Ct. at 2747-2748. The Court found that plaintiff has not proved by a preponderance of the evidence that defendant discriminated against her in denying her the assistant deanship. The Court, however, did find evidence that plaintiff's application was discouraged and considered in a superficial manner. The Court weighed this evidence in its analysis of plaintiff's hostile work environment claim.

C. Claim of Hostile Working Environment

Title VII makes it illegal to discriminate against an employee on the basis of sex or nation of origin.[3] Title VII prohibits an employer from creating or condoning a hostile work environment that is a result of harassment or disparate treatment. See Meritor Savings Bank v. Vinson, 477 U.S. 57, 106 S.Ct. 2399 (1986). This Circuit Court of Appeals has noted that "a pattern or practice of harassment directed at a single employee can violate Title VII." Bundy v. Jackson, 641 F.2d 934, 943 n.9 (D.C. Cir. 1981). The Court of Appeals has held also "that any harassment or unequal treatment of an employee or group of employees that would not occur but for the sex [and/or the nation of origin] of the employee or employees may, if sufficiently patterned or pervasive, comprise an illegal condition of employment under Title VII." McKinnev v. Dole, 765 F.2d 1129, 1138 (D.C. Cir. 1985).

The Supreme Court has said that "the language of Title VII is not limited to 'economic' or 'tangible' discrimination. The phrase 'terms, conditions, or privileges of employment' evinces a congressional intent 'to strike at the entire spectrum of disparate treatment of men and women' in employment." Meritor, 477 U.S. at 64.[4] Of

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[3] Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer - to fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or nation of origin." 42 U.S.C. § 2000e2(a)(l)

[4] Defendant's argument that plaintiff was given several salary increases fails to address plaintiff's complaint. Plaintiff's complaint alleges the "non quid pro quo" harassment which "extends beyond the

Meritor, the Supreme Court has said: "[T]he very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII's broad rule of work place equality." Harris v. Forklift Systems. Inc., ___ U.S. ___, 114 S.Ct. 367, 372 (1993).

The conditions and privileges of plaintiff's employment at Howard have been affected seriously by discriminatory conduct. The removal of Dr. Park from the leadership of the antibiotic subcommittee and the effective removal of plaintiff from the P&T committee was a serious blow to the professional prestige and career goals of the plaintiff. No credible reason has been offered why plaintiff was demoted other than her sex and that she is Korean-American. Plaintiff's career interest in drug utilization review led Dr. Park to establish and develop the antibiotic subcommittee. If plaintiff was not the official chairman of the subcommittee, the evidence is uncontested that Dr. Park alone called the meetings, set the agenda, prepared the minutes and led the discussions of the antibiotic subcommittee. The success of the subcommittee was directly a result of Dr. Park's efforts.

Plaintiff was removed in favor of an African-American male who was a recent addition to the faculty and lacked the expertise of the plaintiff in the area of drug utilization review. As a reason for rejecting Dr. Park for

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economic aspects of employment" identified by the Supreme Court. Id. at 65-66. Plaintiff alleges that she was stripped of any supervisory position or privilege because of her sex and nation of origin. These are the terms and conditions of employment that Congress intended to strike down with Title VII. Id. at 66.

the assistant deanship, defendant stated that plaintiff's career interest was in research. In removing plaintiff from the subcommittee, defendant was denying plaintiff the opportunity to perform research. This demotion damaged Dr. Park's career interests and denied her the privilege and prestige of advancing the work of the subcommittee. This action also isolated plaintiff from her superiors because plaintiff was afforded no valid explanation. Defendant's actions indicated to plaintiff and her colleagues that defendant did not consider plaintiff's professional career as important as those of whom defendant promoted.

Plaintiff was subject to continuous discriminatory conduct. Dr. Park's application for promotion repeatedly was returned for additional documentation. Defendant argues that plaintiff's application was the first to be subject to new, recently developed, criteria. Dr. Park, however, applied for promotion before Dr. Pittman, an African-American male. Dr. Pittman's application was processed quickly and approved without the problems which plagued plaintiff's application. Plaintiff, recently removed from the subcommittee, now was being told by defendant's actions that her application for promotion and tenure was subject to a different standard or at least not important enough to warrant timely consideration.

Dr. Pittman's slur against Dr. Ushiyama, that because she was an Oriental she probably would have an anti-collegial attitude like Dr. Park, went unaddressed by Dean Hill despite the suggestion of Howard's Vice-President Alexis to Dean Hill. Defendant allowed an employee to harass plaintiff. In failing to address the matter, Dean Hill was intimating to Dr. Park that Howard found such behavior acceptable.

Dean Hill rejected Dr. Park for the chairmanship of the Pharm. D. research committee and discouraged plaintiff's application for the assistant deanship. Dean Hill's actions made it acutely obvious to Dr. Park that she was not to be considered for any leadership position at the Howard College of Pharmacy. Although the Court found Howard had a nondiscriminatory reason for the hiring of Dr. Nicholas for the assistant deanship, the Court also found evidence of discrimination in the extremely cursory consideration given plaintiff's application.

Dr. Talang testified that plaintiff was qualified for both positions. Plaintiff repeatedly asked if anything was needed for her consideration as assistant dean. Plaintiff was not given the position. Plaintiff was not informed that another candidate had been selected as assistant dean. Apparently, Dean Hill believed Dr. Park did not merit notification of her rejection. With every action and statement, defendant was telling plaintiff that Howard was not a good environment in which for her to work.

The last of plaintiff's supervisory responsibility was taken from her with her replacement as the coordinator of the Pharm. D. clerkship program. The Court's findings reflect that plaintiff improved the clerkship program under her guidance by creating new practice sites for students. If defendant wished to unify the undergraduate and graduate programs, plaintiff would have been the ideal candidate by reason of her six years of experience organizing the graduate program. Instead, a junior African-American faculty member was given the position. Plaintiff was stripped of every professional position and privilege she had obtained as a faculty member at Howard. The actions, noted in this opinion, clearly demonstrate that the conduct of Dr. Park's supervisors was sufficiently pervasive

to amount to harassment which created a hostile work environment.[5]

In Harris, the Supreme Court said: "Certainly, Title VII bars conduct that would seriously affect a reasonable person's psychological well-being, but the statute is not limited to such conduct. So long as the environment would reasonably be perceived, and is perceived, as hostile or abusive, Meritor, supra, at 67, there is no need for it also to be psychologically injurious." Harris, 114 S. Ct. at 371. This Court finds that plaintiff did suffer psychological injury, which also manifested itself physically, as a result of the hostile work environment she was forced to endure. Plaintiff clearly has met the standard set by the Supreme Court in Harris.

THE REMEDY

The facts indicate that plaintiff was singled out because of her nation of origin and subjected to harassment which may be attributed, both directly and indirectly, to her supervisors and the defendant. An employer will be liable for discriminatory behavior in two

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[5] Plaintiffs charging a continuing violation must show "a series of related acts, one or more of which falls within the limitations period, or the maintenance of a discriminatory system both before and during the [limitation] period." Valentino v. United States Postal Serv., 674 F.2d 56, 65 (D.C. Cir. 1982) (quoting B. Schlei & P. Grossman, Employment Discrimination Law 232 (Supp. 1979)). This Court found the harassment that created a hostile work environment for plaintiff was continuous and still on-going. The last discriminatory incident, plaintiff's removal as coordinator of the clerkship program, occurred in the summer of 1992 when plaintiff was notified. Dr. Park's demotion was effective in April of 1993. Plaintiff filed with the District Columbia Department of Human Rights and Minority Development on September 23, 1992. The plaintiff's original complaint was filed on November 25, 1992.

situations: (1) if the harasser is the employer, its agent or supervisory personnel or (2) the employer knew or should have known of harassment caused by plaintiff's co-workers and failed to take corrective action. Turner v. Barr, 811 F. Supp. 1, (D.D.C. 1993). (citing Bundy v. Jackson, 641 F.2d 934, 943 (D.C. Cir. 1981); Juarez v. Ameritech Mobile Communications Inc., 957 F.2d 317 (8th Cir. 1992). The Court finds that the harassment suffered by plaintiff came from her supervisor, Dean Hill, and her co-workers and that Howard was aware of the harassment.

As part of her compensatory damages, the plaintiff is entitled to recover the reasonable value of medical services that she required by reason of defendant's conduct regardless of whether such services were donated or paid for by insurance. Kassmen v. American, 546 F.2d 1029, 1034 (D.C. Cir. 1977). The Court found the reasonable value of the medical treatment plaintiff received to be valued at $6,965.

Plaintiff will be provided full pay for the period of time that plaintiff's promotion was delayed. The Court found plaintiff's loss of pay by reason of the delay is $1,875. The evidence establishes a basis for a substantial damage award. The Court affords the parties the opportunity to meet and to seek to agree on an appropriate award. If the parties cannot arrive at such a figure, the Court will make a determination.

April 8, 1994
Date

Oliver Gasch
Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOON Y. PARK,

Plaintiff,

v.

HOWARD UNIVERSITY,

Defendant

Civil Action No. 92-2662-OG

September 23, 1994

GASCH, District Judge.

I. Procedural History

The Court's findings of fact and conclusions of law were announced in a Memorandum-Opinion ("Opinion") issued on April 8, 1994. The Court found for the plaintiff in the amount of $1,875 for lost wages, $6,965 in medical expenses and the Court further held that the evidence established a basis for a substantial damage award. Opinion at 22. This memorandum supplements the Court's Opinion filed on April 8th.

II. Discussion

In the Court's Opinion finding for the plaintiff, the Court afforded the parties the opportunity to meet and agree, if possible, on an appropriate award. This had been done successfully in an earlier case also involving this defendant.

Ware v. Howard University, 816 F. Supp. 737 (D.D.C. 1993). However, the Court was advised that, although the parties had met, they were unable to agree. In the memorandum filed by the defendant, reliance was placed on Landgraf v. USI Film Product, 128 L. Ed. 2d 229, 114 S. Ct. 1483 (U.S. April 26, 1994), decided approximately three weeks after the Court's opinion was filed. Accordingly, the Court set the matter for hearing in open court affording the parties the opportunity to state their respective positions concerning the applicability of the Landgraf case.

* * *

[Note: Those portions of this Memorandum relating solely to the application of the Civil Rights Act of 1991 in awarding damages are omitted. They are reported at 863 F.Supp. 14-15.]

* * *

In a case alleging a hostile work environment, often individual incidents taken in isolation do rise to a violation of Title VII. It is when the evidence of the whole pattern of behavior is heard, in concert, that the discriminatory violation is apparent. After weighing the policy arguments cited by the Supreme Court in Landgraf, this Court concludes that when a district court is confronted with a case where discriminatory conduct occurred before and after the enactment of @ 102, the Court can fashion a remedy utilizing the @ 102(a) provisions to compensate the plaintiff for her injury.

III. Damages

Title VII makes it illegal to discriminate against an employee on the basis of sex or nation of origin.[2] Title VII prohibits an employer from creating or condoning a hostile work environment that is a result of harassment or disparate treatment. See *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 106 S. Ct. 2399, 91 L. Ed. 2d 49 (1986). The Court found, in its memorandum-opinion, that the plaintiff was singled out because of her nation of origin and subjected to harassment which may be attributed, both directly and indirectly, to her supervisors and the defendant.

The Supreme Court has said that "the language of Title VII is not limited to 'economic' or 'tangible' discrimination. The phrase 'terms, conditions, or privileges of employment' evinces a congressional intent 'to strike at the entire spectrum of disparate treatment of men and women' in employment." *Meritor*, 477 U.S. at 64. In *Meritor*, the Supreme Court said: "The very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII's broad rule of work place equality." *Harris v. Forklift Systems, Inc.*, 126 L. Ed. 2d 295, 114 S. Ct. 367, 372 (1993).

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[2]Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer - to fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or nation of origin." 42 U.S.C. 2000e2(a)(1).

The conditions and privileges of plaintiff's employment at Howard have been affected seriously by continuous discriminatory conduct. The discriminatory conduct was a serious blow to the professional prestige and career goals of the plaintiff. Dr. Park was stripped of every professional position and privilege she had earned as a faculty member at Howard. The actions, noted in the Court's opinion, clearly demonstrated that the conduct of Dr. Park's supervisors was sufficiently pervasive to amount to harassment which created a hostile work environment.[3] For the reasons stated in this memorandum and the memorandum-opinion of April 8, 1994, the Court finds that an appropriate award for compensatory damages is $ 150,000.

Both parties, through counsel, agree that the Court's

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[3] Plaintiffs charging a continuing violation must show "a series of related acts, one or more of which falls within the limitations period, or the maintenance of a discriminatory system both before and during the [limitation] period." *Valentino v. United States Postal Serv.*, 218 U.S. App. D.C. 213, 674 F.2d 56, 65 (D.C. Cir. 1982) (quoting B. Schlei & P. Grossman, Employment Discrimination Law 232 (Supp. 1979)). This Court found the harassment that created a hostile work environment for plaintiff was continuous and still ongoing. The last discriminatory incident, plaintiff's removal as coordinator of the clerkship program, occurred in the summer of 1992 when plaintiff was notified. Dr. Park's demotion was effective in April of 1993. Plaintiff filed a complaint with the District of Columbia Department of Human Rights and Minority Development on September 23, 1992. The plaintiff's original complaint was filed in federal district court on November 25, 1992.

earlier award of $ 1,875 in back pay is barred by the statute of limitations. 42 U.S.C. 2000e-5(g). Tr. at 6. Defendant Howard University's Memorandum Concerning Damages at 5-6. The incident in question, Howard's delay of Dr. Park's promotion, happened in 1986-87. Under Title VII, back-pay liability "shall not accrue from a date more than two years prior" to the filing of a complaint with the appropriate agency. Civil Rights Act of 1964, sec. 706(g), as amended, 42 U.S.C. 2000e-5(g). Dr. Park filed her claim with the D.C. Department of Human Rights and Minority Development on September 23, 1992. Therefore, the earliest date for back-pay liability to be assessed to the defendant is September 23, 1990, a considerable time after the delay in promotion occurred. Consequently, the Court limits its award to $150,000 in compensatory damages for the discriminatory conduct stated in the Opinion of April 8, 1994.

ORDER

Wherefore, upon the evidence adduced at trial, the proposed findings of fact and conclusions of law submitted by the parties' counsel, and the entire record herein, and for the reasons set forth in the accompanying Memorandum-Opinion of April 8, 1994, it is by the Court this 22nd day of September, 1994,

ORDERED that judgment be, and hereby is, entered for the plaintiff, Soon Y. Park; and it is further

ORDERED that the defendant, Howard University, tender to the plaintiff the sum of $150,000.00 in compensatory damages.

Oliver Gasch, Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOON Y. PARK,)
Plaintiff,)
)
v.) Civ. Action
) 92-2662-OG
HOWARD UNIVERSITY,)
Defendant)

GASCH, Senior District Judge.

Plaintiff was awarded a judgment following a bench trial in the amount of $ 150,000. Pursuant to the outcome of the case, counsel has filed a motion for the award of an appropriate fee.

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[NOTE: Those portions of this Memorandum relating solely to counsel's billing rate and hours are omitted. They are reported at 881 F.Supp. 653-657.]

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Hogan & Hartson's third memorandum dated October 17, 1994, filed by Ms. Holt on behalf of Howard University seeks to reduce the fees sought by plaintiff's counsel on the theory that the degree of success obtained justifies only a *de minimis* recovery. In her contention that plaintiff prevailed on only one of her three allegations, counsel relies on *Hensley v. Eckerhart*. It is noted that the Supreme Court concluded as follows:

> Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained. On remand the District Court should determine the proper amount of the attorney's fee award in light of these standards.

461 U.S. at 440.

In his concurring opinion, Justice Brennan further clarified the language just quoted.

> The mere fact that plaintiffs do not prevail on every claim does not preclude an award of fees for all work reasonably performed, but it is rarely an abuse of discretion to refuse to award fees for work done on nonprevailing claims that are not closely related to the relief obtained.

Id. at 452-53 (footnote omitted).

Counsel notes that three aspects of the plaintiff's claim are identified in the Court's opinion: sexual harassment, discrimination against plaintiff in not promoting her to the position of assistant dean for student affairs and an ongoing pattern of discrimination against plaintiff based on her sex and nation of origin which created a hostile work environment. From this, counsel contends that since plaintiff prevailed only on the hostile work environment aspect then only one-third of the requested fee should be paid. These

claims all arise from the same nucleus of operative facts. Failure to adopt each of the contentions should not result in a drastic reduction in the fee awarded. Justice Brennan, in his concurring opinion, puts it this way:

> Evaluation of the interrelatedness of several claims within a single lawsuit, and of the legal work done on those claims, is most appropriately a task for the district court that heard and decided the case, subject to appellate review for abuse of discretion. As the Court implicitly recognizes, the case before us manifests no clear abuse of discretion.

Hensley, 461 U.S. at 453-54. Reference is made in the Justice's opinion to the local case of *Copeland v. Marshall*, 205 U.S. App. D.C. 390, 641 F.2d 880 (D.C. Cir. 1980) (en banc).

> However, it sometimes will be the case that a lawsuit will seek recovery under a variety of legal theories complaining of essentially the same injury. A district judge must take care not to reduce a fee award arbitrarily simply because a plaintiff did not prevail under one or more of these legal theories. No reduction in fee is appropriate where the "issue was all part and parcel of one matter," *Lamphere v. Brown Univ.*, 610 F.2d 46, 47 (1st Cir. 1979), but only when the claims asserted "are truly fractionable," *id.*

Id., 641 F.2d at 892 n.18. There is an interrelation between plaintiff's hostile working environment contention and her claims of sexual harassment as well as the failure of the

defendant to appoint her to the position of Assistant Dean.[4] This contention is brought into sharp focus by the remark of Dr. Pittman, who recommended against the appointment of Dr. Ushiyama, saying because she was an Oriental, she would probably have an anti-collegial attitude like Dr. Park. This remark went unaddressed by Dean Hill despite the admonition of Howard's Vice President, Dr. Alexis. Memorandum-Opinion at 9, par. 22. (D.D.C. April 8, 1994).

Hostile Work Environment

The core complaint on which plaintiff relies and which is illustrated by the Court's findings of fact is the hostile work environment[5] to which plaintiff was subjected. After

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[4] "A play cannot be understood on the basis of some of os its scenes but only on its entire performance, and similarly, discrimination analysis must concentrate not on individual incidents but only the overall scenario." *Andrews v. City of Philadelphia* 895 F.2d 1469, 1484 (3rd Cir. 1990).

[5] *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 66, 106 S.Ct. 2399, 2405, 91 L.Ed. 49 (1986) (unwelcome sex advances constitute hostile work environment; *Turner v. Barr*, 811 F.Supp. 1 (D.D.C. 1983) (white U.S. Marshal of Jewish faith told to sit in rear of room by his African-American colleagues); *McKinney v. Dole*, 765 F.2d 1129 (D.C.Cir.1985) (unequal treatment based on sex of employee); *Vance v. Southern Bell Tel. and Tel. Co.*, 863 F.2d 1503 (11th Cir.1989) (work environment must be considered in its totality).

graduating from the defendant's School of Pharmacy *summa cum laude* and after obtaining her doctorate from Mercer University, plaintiff was welcomed back to the defendant University and installed as an assistant professor. She was given the assignment of establishing clinical practice sites and instructing students in drug therapy which involved the use of antibiotics in treating infectious diseases. She was given a leading role in teaching the use of antibiotic drugs and appointed to the Research Advisory Committee by Dean Hill. She was particularly interested in research concerning cephalosporins. Her research was adopted by the Howard University Hospital. Her contributions were commended by Doctors Trudeau and Malone, and Dean Hill. She was a member of the Pharmacy and Therapeutics ("P&T") Committee, the chairman of which was Dr. Robert E. Taylor. (Plaintiff's Exh. 12). A drug utilization review including Dr. Park's research was conducted under the auspices of the P&T Committee. Plaintiff's complaint of sexual harassment involved Dr. Taylor in that he solicited sexual favors from plaintiff.[6] Judge Hogan's prior Order granting partial summary judgment was predicated on the fact that the amended complaint contained no discrete claim of sexual harassment. The Order also specifically reserved to the trial judge the admissibility of such evidence. The Court permitted receipt of the evidence on the ground that it related

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[6]*Bundy v. Jackson*, 205 U.S. App. D.C. 444, 641 F.2d 934, 944 (D.C. Cir. 1981) (unwelcome sexual advances constitute harassment and discriminatory work environment).

directly to the charge of hostile work environment.[7]

An antibiotic usage advisory ad hoc subcommittee was established by Dr. Park to review Howard's utilization of antibiotics. Plaintiff was the prime mover in the development of this ad hoc subcommittee. She called meetings, set the agenda, presided over and produced written summaries of the ad hoc subcommittee on antibiotics. (Plaintiff's Exhs. 20, 22, 40). In April 1986, Dr. Olu Olusanya, Acting Chairman, Department of Pharmacy Practice, commended plaintiff for her research and "invaluable information she had compiled as a result of the research of the antibiotic subcommittee." (Plaintiff's Exh. 41).

In June of 1986, however, plaintiff was informed by Dr. Olusanya and Dr. Jerome Pittman that she might be removed from the antibiotic subcommittee. Plaintiff objected because she did not wish to be separated from her established practice sites in infectious diseases and from the antibiotic subcommittee. (Plaintiff's Exh. 49). Plaintiff was given no explanation for her removal and the reasons there for except that she understood that she was to be removed to make room for a new faculty member, Dr. Mark Eggleston, a male African-American student of Dr. Park who had recently

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[7] *McKinney v. Dole*, 765 F.2d at 1138 (unequal treatment of employee that would not have occurred but for the sex of the employee). *Rogers v. EEOC*, 454 F.2d 234 (5th Cir. 1971) (in a suit by Hispanic plaintiff hostile work environment was demonstrated by the discriminatory treatment of Hispanic customers).

graduated. (Plaintiff's Exh. 56). The Court was not favored with any testimony indicating that Dr. Eggleston was more qualified or what his qualifications were. Memorandum-Opinion at 6, par. 13. All of Dr. Park's responsibilities and assignments on the antibiotic subcommittee and the P&T Committee were effectively terminated. Plaintiff sought clarification for her removal from her position on the P&T subcommittee without success. (Plaintiff's Exhs. 94, 104). The Court made a finding that plaintiff's career goals were hindered as a result of her diminished role at Howard and the termination of her participation in her specialty of antibiotic research.

In the summer of 1985, plaintiff discussed the possibility of promotion from assistant professor to associate professor with Dr. Terry Trudeau, Chairman of the department to which she was assigned. (Plaintiff's Exh. 29). Dr. Trudeau told plaintiff to collect the necessary papers and to make application. Plaintiff received letters of recommendation from Dr. Vinod Mody, Professor of Medicine, Dr. Robert Malone, Director of Pharmacy Services, and Dr. Gloria Nichols, President of the Howard University Alumni Association (Plaintiff's Exh. 30). Plaintiff expressed concern over her languishing application and in January of 1986, was advised by Dr. Olusanya that her promotion was under consideration. (Plaintiff's Exh. 35).[8]

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[8] One of the reasons that plaintiff's application languished was because of Dr. Taylor's - one of the parties accused of sexual harassment - unexplained delay in recommending Dr. Park for tenure. Memorandum-Opinion at 7. Dr. Park needed Dr. Taylor's recommendation because, as chairman of the P&T committee, he supervised plaintiff's research on the antibiotic subcommittee and her performance

The application for promotion of Dr. Jerome Pittman, an African-American male, who applied after plaintiff, was under consideration at the same time. When Dr. Pittman received his promotion, plaintiff was advised that the rules had been amended. When plaintiff sought to obtain information as to the circumstances of Dr. Pittman's promotion, the request was denied. At the suggestion of Dr. Olusanya (Plaintiff's Exh. 37), plaintiff obtained additional recommendations from Dr. S. M. Siram, Associate Professor and Director of the Trauma Center Surgical Intensive Care Unit and Dr. Wayne Grieves, Chief of the Infectious Diseases Division. (Plaintiff's Exhs. 43, 47). On September 30, 1986, plaintiff's application was again rejected. (Plaintiff's Exh. 53). Plaintiff was told that the new criteria was the reason for the rejection. Since Dr. Pittman was promoted in the interim, plaintiff sought a copy of his application to use it as an example of a proper application. Contrary to the practice at Howard of sharing such information, plaintiff was denied a copy of Dr. Pittman's application.

Plaintiff received her promotion to associate professor effective August 15, 1987, almost two years after her application was filed in October 1985. (Plaintiff's Exh. 63). Plaintiff was afforded no explanation for the delay in promotion nor was any credible testimony offered on this subject by defendant. The Court specifically held that the defendant's explanation for the delay was not credible. Memorandum-Opinion at 8, par. 20.

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as clinical pharmacist. Transcript of Trial at 178-79. The Court found that the recommendation produced at trial, Plaintiff's exhibit 29, was not correctly dated. Memorandum-Opinion at 7, P 17.

The hostile atmosphere toward Asian-American females characterized Dean Hill's attitude. When Dr. Suzi Sushiyama, a Japanese-American female, applied for a faculty position at Howard on January 12, 1988 (Plaintiff's Exh. 71), Dr. Pittman made the comment that because she was an Oriental, she would probably have an anti-collegial attitude like Dr. Park. (Plaintiff's Exh. 75). Plaintiff notified Dean Hill of this remark, which she believed was unethical, racist and illegal. Dr. Carlton P. Alexis, Interim Vice President for Health Affairs, advised Dean Hill to inform Dr. Park in writing of the University's equal opportunity policy. (Plaintiff's Exh. 79). This Dean Hill failed and neglected to do. The Court found that plaintiff was never informed of any action by Howard to address the impropriety of Dr. Pittman's comment. Dr. Sushiyama was not hired by Howard. Memorandum-Opinion at 8, par. 22.

In the summer of 1991, Dr. Vasant G. Talang, the Associate Dean of the College of Pharmacy, told plaintiff that he wished to recommend her for the chairmanship of the Doctor of Pharmacy ("Pharm-D") Research Committee since he planned to retire from that position. Dr. Talang further testified that he met with Dean Hill, who decided not to change the structure of the administration at that time. On February 24, 1992, plaintiff wrote Dr. Talang in reference to the chairmanship of Pharm-D Research Committee. (Plaintiff's Exh. 119). Dr. Talang responded on March 26, 1992 (Plaintiff's Exh. 124), that there would be no change in the status of the Committee at that time. Plaintiff requested an explanation from Dr. Talang concerning the withdrawal of the oral offer of the chairmanship. (Plaintiff's Exh. 125). No explanation was given plaintiff nor was any satisfactory testimony offered in court.

Plaintiff wrote Dean Hill expressing interest in the position

of Assistant Dean for Student Affairs. (Plaintiff's Exh. 117). Not having heard from Dean Hill for approximately four months, plaintiff again wrote the Dean inquiring about proper procedure. (Plaintiff's Exh. 120). Subsequently, plaintiff learned that Dr. Bertrand Nicholas had been appointed Assistant Dean for Student Affairs by receiving a routine communication. (Plaintiff's Exh. 126). Dr. Nicholas, a white male, had occupied the position of Assistant Dean for Student Affairs at the Massachusetts College of Pharmacy. Dr. Talang testified that plaintiff was well qualified for the position of Assistant Dean. Transcript of Trial at 425. She was a successful professor and had established an impressive relationship with her students. (Plaintiff's Exh. 155). Pharmacy students at Howard have presented to plaintiff five awards and plaques in recognition of her work as a faculty member. Dr. Talang further testified that the reason for Dr. Nicholas' appointment was his experience as Assistant Dean of Student Affairs at Massachusetts College of Pharmacy. The Court credited this testimony of Dr. Talang. The Court also found no serious consideration was afforded plaintiff for this position. Memorandum-Opinion at 11, pars. 29-20. Defendant proffered that she was told that she was not given the position because of her interest in research. This explanation is pretextual and inconsistent with her removal from the chairmanship of the antibiotic research subcommittee.

Regina Carson, an African-American female and junior faculty member, was named coordinator of the clerkship committee for the Bachelor of Science program. She was also named to succeed plaintiff as coordinator for the Pharm-D program. Ms. Carson had no teaching experience and no testimony was offered as to her qualifications for replacing plaintiff in these two assignments. There was no intimation in the testimony offered on behalf of defendant or in

cross-examination of plaintiff's witnesses that the service rendered by the plaintiff in these several assignments was unsatisfactory or that it was anything other than deserving of the commendations that she received from many faculty members, including even Dean Hill. The only explanation for this action by the defendant is that the defendant's representatives desired to remove this highly qualified, tenured professor from the positions of influence at the University was because of her ethnicity and gender and her lack of response to Chairman Taylor's sexual suggestions.

The evidence clearly demonstrates that plaintiff was subjected to a hostile work environment by the defendant and defendant's agents. The Supreme Court has recently held in *Harris v. Forklift, Inc.*, U.S. , 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993), that in order to recover in a case involving abusive work environment harassment, a plaintiff need not prove psychological injury. The plaintiff offered and the Court received and credits the testimony of her physicians to the effect that she did as a result of this discrimination receive psychological and physical injury and damages.

The Supreme Court in *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 66, 91 L. Ed. 2d 49, 106 S. Ct. 2399 (1986), quoted with approval Judge Goldberg's definition of hostile work environment:

> The phrase 'terms, conditions or privileges of employment' in [Title VII] is an expansive concept which sweeps within its protective ambit the practice of creating a working environment heavily charged with ethnic or racial discrimination. . . . One can readily envision working environments so heavily polluted

> with discrimination as to destroy completely the emotional and psychological stability of minority group workers . . ..

Id. at 66 (quoting *Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971, *cert. denied*, 406 U.S. 957, 32 L. Ed. 2d 343, 92 S. Ct. 2058 (1972). From the incidents recounted by the Court and taken from the record, it can readily be seen that plaintiff was literally stripped of the responsible positions she had earned during the course of her service at the defendant University. This was without any charge that she had performed her duties in an unsatisfactory manner. Persons chosen to replace her had limited, if any, qualifications. None were alleged at the trial.

The Eleventh Circuit, in *Vance v. Southern Bell Tel. and Tel. Co.*, 863 F.2d 1503 (1989), emphasized the need for considering the totality of the evidence rather than each instance in isolation.

> By contrast, the district court in the present case used a two-step analysis to determine whether the plaintiff's evidence was sufficient to withstand the defendant's motion for JNOV. First, the district court examined each individual allegation of discrimination in turn, and found that the plaintiff had made out a prima facie case of discrimination only as to the two noose incidents. Next, the court held that two incidents of discrimination are too few, as a matter of law, to establish a harassment claim under sec. 1981.

Id. at 1511.

Based on the record in its entirety and the authorities which have been cited, the Court concludes that, but for the

violation by the defendant of the plaintiff's rights under 42 U.S.C. @ 2000e-2, which reads as follows, "(a) Employer practices. It shall be an unlawful employment practice for employer--(1) . . . to discriminate against any individual with respect to [her] . . . sex, or national origin;" these incidents would not have occurred.

The number of hours plaintiff's counsel has documented is uncontested. It is 353.25 hours. The only argument defendant makes is that plaintiff did not prevail on all of her allegations. She did, however, prevail upon the core allegation, hostile work environment to which the other allegations are interrelated.[9]

* * * *

CONCLUSION

Accordingly, upon consideration of the foregoing, the Court approves Mr. Barrett's applications as follows:

9

The core facts to the claims of sexual harassment and the denial of the assistant deanship are interlocking with, and supportive evidence of, the claim of hostile work environment. The main players, in each incident, are Dean Hill and Chairman Taylor. This pair systematically stripped Dr. Park of every leadership position at the Howard College of Pharmacy. This Court notes the substantial "factual overlap" in the related claims. *Goos v. National Ass'n of Realtors,* 302 U.S. App. D.C. 363, 997 F.2d 1565, 1570 (D.C. Cir. 1993). Plaintiff was unable to prevail on these distinct claims but the facts surrounding the claims were completely subsumed into the poisonous atmosphere which fostered the hostile work environment at Howard.

$105,975.00 for legal services rendered by him; $5,418.75 for legal services rendered by Sandra Gustave; reimbursement for expenses paid in the amount of $1,697.58.

SO ORDERED.

Oliver Gasch, Judge

Date: Feb. 23rd 1995

HOWARD UNIVERSITY
Washington, D.C. 20059

College of Pharmacy
and Pharmacal Sciences

June 3, 1992

Russell L. Miller, M.D.
Executive Vice President
Howard University

Dear Dr. Miller:

Prior to our meeting on June 10, 1992, I am writing this letter to brief you on the subject to be discussed. The main issues are as follows:

Serious questions have existed for a long time regarding the administrative advancement of female faculty of the College of Pharmacy and Pharmacal Sciences. This problem particularly affected me last Fall. At that time, I learned the Assistant Dean for Student Affairs had retired and I wrote a letter identifying my interest in being considered as a candidate to Dean Hill on October 19, 1991. I did not receive any response from Dean Hill to this letter. After several months of waiting, I subsequently wrote a second letter of interest to Dean Hill on February 25, 1992 specifically inquiring about the position. Again, Dean Hill did not acknowledge my letter. On March 9, 1992 I went to see Dean Hill at his office. Dean Hill then admitted that he had received my two letters, but the position was already committed to another faculty.

It is evident that I was not given EQUAL OPPORTUNITY to be considered for this position. Furthermore, Dean Hill again blatantly ignored my letter of grievance dated March

18, 1992 which was written after our meeting of March 9, 1992.

I am seeking your guidance in this issue. I would like appropriate resolution not only for myself but also in hopes the College may progress in a positive directions in accordance with the Howard Mission.

Thank you in advance for your time and consideration given to this matter.

Sincerely,

Soon Y. Park

Soon Y. Park Pharm.D.
Associate Professor

Attachments

[Plaintiff's Exhibit 127]

Dr. Olusanya

July 8, 1992

Dear Olu:

I would like to have an opportunity to discuss with to you about:

1. Sexual Harasement cases at HUH

2. harasement/blocking one's professional career at HUH

Please let me know when are available for me.

Thank you.

Soon

discussed 145-215 pm at Olu's office

[Plaintiff's Exhibit 129]

HOWARD UNIVERSTIY
Washington, D.C. 20059

College of Pharmacy
and Pharmacal Sciences
Department of Pharmacy Practice

July 13, 1992

TO: Olu A. Olusanya, Pharm.D.
Chairman

FROM: Soon-young Park, Pharm. D.
Associate Professor

SUBJECT: RESPONSE TO YOUR MEMORANDUM OF JULY 9, 1992

I am in receipt of your letter (signature omitted) of July 9, 1992.

A. Regarding your request for documenta- tion of "charges" and "concerns" in writing, I submit the following:

I am puzzled by your request since the issues we discussed on July 8, 1992 at your office were in fact "old" items which I have dutifully brought your attention verbally and/or in writing for many years. Some of these concerns go back to the time you were "acting chairman". I have candidly discussed with you many painful experiences of working situations which interferred with my professional growth as a female faculty member of Howard University. Each situation, without delay, I have informed you by identifying offenders and specific incidences no matter how embarassing or degrading they were to me. However, although you

usually are empathetic, virtually none of these reports have elicited a meaningful response or solution by you.

B. Your plan to discuss with Dean Hill raises the following concerns:

1. It is my sincere feeling that the sensitivity of Dean Hill toward female faculty's welfare is lacking. Since October 1991, I have written four (4) letters to Dean Hill. These include issues addressing UNEQUAL OPPORTUNITY for female faculty for administrative positions at COPPS. Yet, as of now, there has been absolutely no response from him regarding even one of these letters.

2. Dean Hill himself has been kept informed of my concerns on many issues, either by meetings with him or by written correspondence. Although he superficially appears to be sympathetic, no action has been taken from his office to improve the situtations.

C. Difficulties of planning long-range goals and achieving upward mobility administratively at COPPS must be addressed:

In addition to issues raised above in A & B, I submit the following facts which contribute to my confusion and disappointment:

1. In early 1991, the COPPS faculty (DPP included) were informed by the Dean that we had the option to take a 10 month tract. In fact, we were told repeatedly we had no choice in this matter. At the time, I verbally volunteered followed up with my written request to you on September 24, 1991. To this date, I have not been informed of an official position regarding this matter.

2. Highly encouraged by some of the Administrative faculty at COPPS (including you), I submitted to Dean Hill a letter identifying my interest in being consider-ed for the position of Assistant Dean of Student Affairs. This was delivered on October 19, 1991, followed by several more written inquiries. To this date, I have not received any response to this item.

3. Dr. Vasant G. Telang, Associate Dean for Academic Affairs and Chairman for Pharm. D. Research Commmittee, offered me the position of Chairman for the Pharm.D. Research Committee on August 7, 1991 which I accepted. This never material-ized. Following further inquiries, Dr. Telang finally responded by a letter of March 26, 1992, by stating that "there is no changes in status" without any specific explanation for his change of mind.

4. Finally, I wrote a letter to Dean Hill on July 6, 1992 requesting "a leave of absence without pay" starting August 15, 1992 through August 14, 1993. Again, no response from him to this date.

In summary, based on the above incidents, the level of communication at COPPS is unidirectional. Although my concerns expressed verbally may elicits some sympathy and agreement, this is not followed by meaningful actions. Furthermore, at least in my situations, many serious issues I have brought attention in writing to the Administration are simply ignored.

Thank you for your attention.

PRIVATE SECTOR

Copy sent 8\16\92

EMPLOYMENT
PRE-COMPLAINT QUESTIONNAIRE

DHR USE ONLY: Name of Interviewer _____
Date of Interview _____

COMPLAINT DATE: *August 13, 1992*

COMPAINANT'S DATE OF BIRTH: *09 15 1945*
Month Day Year

NAME *Soon Y. PARK*
First Middle Last

ADDRESS *30 Falling Creek Court*
Street Apt. No.

Silver Spring Montgomery MD 20904
City County State Zip Code

TELEPHONE NUMBER WORK *202-806-7960*
HOME *301-236-0357*

I prefer to be contacted by phone
(x) at work *If you leave # and name only.* Time *10A-2pm M-F*
(x) at home *After 6 pm*

PERSON to contact if you cannot be reached:

Name *Richard H. Parker*

Phone No. *(202) 526-5600*
Address *30 Falling Creek Court,*
Silver Spring, MD 20904

==========

I WISH TO COMPLAIN AGAINST:

NAME OF ESTABLISHMENT/AGENCY *Howard University, College of Pharmacy and Pharmacal Science*

ADDRESS *2300 4th St NW*
Street
Washington DC 20059
City Zip Code

Dr. Wendell T. Hill Jr. Dean of College Name and Title of Principal Officer, Owner, Manager, etc.

TELEPHONE NUMBER: *202-906-6530*

NUMBER OF EMPLOYEES: _____

1. Were you discriminated against because of your:

( ) Race
( ) Color
(x) Sex
( ) Religion
( ) Age
(x) Naional Origin
( ) Sexual Orientation
( ) Matriculation
( ) Physical Handicap
( ) Personal Appearance
( ) Marital Status
( ) Family Responsibilities
( ) Political Affiliation
( ) Source of Income
( ) Place of Residence

2. How do you feel you were discriminated against:

( ) Termination
( ) Denied Employment
(x) Denied Promotion
(x) Differential Treatment
(x) Sexual Harassment
( ) Retaliation
( ) Other (Specify)_____

3. Date(s) of alleged discrimination_____
4. What reason(s) was/were given by the employer for the action taken against you?
*No reasons were given to me at all, neither verbally nor in witing.*_____

5. What remdy are you seeking from DHR? *What was discussed during interview.*_____

6. EMPLOYMENT DATA:
A. Date hired *August 15, 1981*
Salary at hire $ *27,500*
Job tile at hire *Assistant Professor* B. Date of termination_____
Salary at termination $_____
Job tile at time of termination____
C. Job title & salary at time of discrimination _____
(Assistant and) *Associate Professor* $ *56,300*
D. Job title & salary of position in question
Assistant Dean for Student Affairs $ *?*
E. Name & title of immediate supervisor__ *Dr. Olu A. Olusanya, Chairman of the Department*
F. Have you attmpted to resolve your problem by discussing the matter with a represntative of management?
(x) yes ( ) no

If so, name the person(s) contacted: *Dean Hill Dr. Olusanyo Dr. Russell R. Miller*

G. If you are a D.C. Government Employee, have you filed an informal complaint with an EEOC Counselor?
( ) No ( ) Yes Date _____

If yes _____
Counselor's Name & Agency

_____
Telephone No.

H. Give name of your Union _____

I. Did you file a Union grievance?
( ) yes ( ) no
If so, what happened *N/A*

- -

7. What information do you have to indicate that you were treated differently because of discrimination?
please see attached

8. List names of persons whom you feel can provide evidence on your behalf.
Name Title Telephone number:
I will provide them on the interview day

9. Did you file a complaint with EEOC?
( ) Yes (x) No

10. If you have an attorney please give name, address and telephone number.

_____
Name Address Telephone

11. Personal Data (For research purposes only):

Please check appropriate boxes

A. Sex: (x) Female ( ) Male

B. Ethnic Group: ( ) Black
( ) White/Anglo (x) Asian *US Citizen* ( ) Spanish Surname
( ) American Indian ( ) Other (Specify)_____

C. Age (present) *46*
Social Security No. *510-64-9186*

OUTREACH ASSESSMENT FORM

A. Please check the appropriate box to indicate how you were referred to this agency.

(x) Friend/Co-worker
( ) Agency/Organization (Specify)
( ) Television/Radio Announcements
( ) EEO Counselor, D.C. Government
( ) EEOC
( ) HUD
( ) Telephone Book
( ) Newspaper Article
( ) Pamphlets/Brouchures Published by Agency
( ) Other (Specify): _____

B. D.C. residents, please circle the Ward in which you live.
1 2 3 4 5 6 7 8

C. If you are not a D.C. resident, please indicate the state in which you live by checking the appropriate box below.

(x) Maryland
( ) Virginia
( ) Other (specify): _____

I joined the College of Pharmacy & Pharmacal Sciences, Howard University on August 15, 1981 as Assistant Professor. I am an alumni of Howard (B.S. in Pharmacy in 1978).

My two major responsibilities in my specialty areas of clinical pharmacy are: 1) teach didactic courses of antibiotics to pharmacy students and 2) provide clinical pharmacy services in the area of infectious diseases to Howard University Hospital (HUH) patients. The latter activity requires me to work with a team of physicians. I have enjoyed teaching and a solid relationship with students as documented by my receiving many recognition awards from the students. My work at the Hospital has been productive of many antibiotic cost saving measures and improvement of drug therapy for numerous patients. These activities have resulted in many letters of support and thanks written by Physicians at HUH.

However, I have been continually subjected to acts of discrimination and harassment by some people I have worked with based on my sex and national origin (Korean); in addition, improper sexual advances have been made by some over a period of time. This resulted in interferrence with professional practice of my specialty and personal anguish. These pattern of discriminatory acts are briefly as follows:

1. Encouraged by the previous Chairman of my Department,

I filed an application with supporting documents for promotions to Asociate Profesor in October 3, 1985. But two months later, I was told by the Chairman that my application was not even reviewed by the department executive committee (all male) and the reasons for the rejection was that I had taken 3 months maternity leave in 1984, and that I, by being a mother, was not ready for promotion at that time. At the same time, a male faculty who had applied about 2 months after I and his application was processed within two weeks. I was devastated by this injustice but nevertheless applied again and finally received a promotion with indefinite tenure in August 1987.

2. In 1981, I established an ad-hoc antibiotic usage subcommittee at the Howard University Hospital. The work of this subcommittee resulted in significant cost-savings to the hospital. Despite my contribution, in 1987, without any reason given, I was replaced by a male colleague. Another male colleague assumed a supervisory role in the hospital and ultimately took my antibiotic expert role in the committe although this was not his major specialty. He repeatedly made my life difficult. On one occasion, he remarked to the current chairman of our department that he was opposed to interviewing an oriental female faculty candidate (based on her name) because she may have a bad attitude like Dr. Park (me). I made a protest to Dean Hill on 2/26/88 but no recourse was taken. The pattern of harassment still continues. Since I was pushed out of my specialty area of practice from the hospital, I was professionally and emotionally devastated. I asked my chairman for his guidance, yet nothing has been resolved. My chairman appointed two male faculty members as vice chairman and supervisor at the hospital (no job descriptions, qualifications written, or job announcements).

3. At the College Level: 65% of the pharmacy students are female. Yet there are no female faculty who holds administrative position in the Dean's Office (1 Associate Dean, 2 Assistant Deans). There are no position descriptions or vacancies advertised. In June 1991, the Associate Dean and my Chairman informed me that the Assistant Dean for Student Affairs was retiring and that the job would probably be mine if I wanted it. They said they would let the Dean know of my interest. After waiting to be called by the Dean for an interview, I wrote a letter expressing my interest in this position to Dean Hill on 10/19/91. With no response, I wrote yet another letter of interest on 2/25/91. There was no response and never was a job announcement either. I met with Dean Hill at his office on 3/9/92. He acknowledged receiving my two letters but the job was committed to another faculty member who was male and new to Howard. I wrote a letter of grievance to Dean Hill on 3/18/92 and received no response. I wrote a letter of inquiry on 6/6/92 as to why I was not considered for the position and received no response. In fact, it appears as far as Dean Hill is concerned, I do not exist. I went to see the Vice President of the University on 6/16/92 with no meaningful outcome on my behalf.

4. In summary, despite my devotion to teach and practice and my proven competence, I have been consistently overlooked for any promotion to an administrative position. Furthermore, I have been subjected to various form of harassment and suffered humiliation which has interfered with my healthy working environment and productivity. I have dutifully reported to higher-ups for recourse without any succesful resolution.

I have documentation which substantiate that I was continually discriminated and harassed based on sex and nation origin (Korean).

DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN RIGHTS AND
MINORITY BUSSINESS DEVELOPMENT

In the Matter of:	*	
	*	COMPLAINT
SOON Y, PARK	*	DOCKET NO.
	*	92-287-
COMPLAINANT	*	P(CN)
	*	
-v-	*	
	*	
HOWARD UNIVERSITY	*	
RESPONDENT	*	

I Soon Y. Park
residing at 30 Falling Creek Court Silver, Maryland 20904 charge the above Respondent whose address is 2400 Sixth Street N. W. Washington, D.C. 20059 with and unlawful discriminatory practice relating to employment on or about March 25, 1992 and continuing by subjecting me to differential treatment in terms and conditions of employment.
because of my sex (female) and national origin (Korean)

THE PARTICULARS ARE:

1. I was employed by the Respondent on August 15, 1981, as an Assistant Professor, earning a slary of $27,500 per annum. I am still employed by the Respondent, as an Associate Professor, earning a salary of approximately $56,300 per annum.

2. The Respondent has not articulated a valid reason for discriminating against me.

3. It is my belief that I was discriminated against on the bases of my sex (female) and national origin (Korean) for the following reasons:

A. In May or June 1991, Dr. Vincent G. Talang, (Associate Dean of Academic Affairs-India) and Dr. Olusanya (Chairman-Nigeria) asked me if I was interested in the position of Assistant Dean for Student Affairs when it became vacnt. I said that I would be interested. I was told I would be recommended for the position to Dr. Wendell T. Hill, Dean (America).

B. The position became officially vacant in August or September 1991.

C. I applied for the position in writing to Dean Hill on October 19, 1991. I did not receive a reply.

D. On March 25, 1992, I became aware that the position of Assistant Dean for Student Affairs was held by Dr. Bertlam Nicholas (American male). I became aware of this by memorandum that was written by him on the above date. An official announcement stating that Dr. Nicholas filled this position has not been made as of 09/23/92.

E. On June 2, 1992, I wrote a memorandum to Dean Hill, asking him why I was not interviewed or selected for the position in question, which I believe I was qualified for.

F. On July 23, 1992, in a meeting this statement was said: Those faculty members who hold administrative positions in the Dean's office, specifically Assistant Dean(s) and Associate Dean(s) do not have to go through the college's Appointment, Reappointment, Promotion and ^Tenure Committee. The Dean himself will "take care" of the promotion and tenure process and award these administrative faculty members the next higher rank and/or tenure.

G. Statements such as the above lead me to believe that Dean Hill can place anyone in a position that he wants. There is not an administrative process in the Dean's office that an employee can go through to apply for a vacant position.

H. It is my belief that I was denied the opportunity for advancement in my career because of my sex (female) and my national origin (Korean).

Therefore, I charge the Respondent with unlawful discriminatory practice on the bases of my sex (female) and national origin (Korean), in violation of the District of Columbia Human Rights Act of 1977.

I have not commenced any action, civil, criminal or administrative, based on the above allegation(s), other that the following: CROSS FILED WITH EEOC .

* * * * * * *

Soon Y. Park, being duly sworn, deposes and says: that she has read the foregoing complaint and knows the contents

thereof; that the same is true of her own knowledge, except as to the matters therein stated on information and belief; and that as to those matters believes the same to be true.

Subscribed and swkorn to before me
this 23rd day of September, 1992.

Soon-Young Park
COMPLAINANT'S SIGNATURE

Winona Lake
NOTARY PUBLIC

WINONA LAKE, Notary Public
District Of Columbia, My Commission
Expires March 31, 1995.

Supreme Court, U.S.
FILED
JUN 12 1996
CLERK

No. 95-1832

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

SOON Y. PARK,

Petitioner,

v.

HOWARD UNIVERSITY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF IN OPPOSITION

DAVID G. LEITCH*
AMY FOLSOM KETT
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5822

* Counsel of Record

Counsel for Respondent

QUESTION PRESENTED

Whether this Court should exercise its certiorari jurisdiction to review the application of settled law concerning exhaustion of administrative remedies to bar a Title VII hostile work environment claim when the employee's EEOC charge did not allege a hostile environment but challenged only a single decision by her employer not to appoint her to a position she desired.

RULE 29.6 STATEMENT

Respondent Howard University has no parent companies and no nonwholly owned subsidiaries.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-1832

SOON Y. PARK,

Petitioner,

v.

HOWARD UNIVERSITY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF IN OPPOSITION

Respondent Howard University respectfully requests that this Court deny the Petition for a Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the District of Columbia Circuit.

COUNTERSTATEMENT

As originally framed, this case presented one issue: whether Howard University ("the University") discriminated against Soon Y. Park ("Park"), a tenured professor at the University, on the basis of her sex and national origin in violation of Title VII, 42 U.S.C. §§ 2000e to 2000e-17, by not selecting her to be Assistant Dean for Student Affairs at the University's

College of Pharmacy and Pharmacal Sciences ("the College of Pharmacy"). Although the district court, after a bench trial, rejected Park's claim, it entered judgment for her on a different theory that Park had neither presented in the charge she filed with the Equal Employment Opportunity Commission ("EEOC") nor pleaded in her original or amended complaint. The court of appeals properly determined that petitioner had failed to exhaust her administrative remedies and reversed the judgment.

Soon Y. Park, a Korean-American, is a tenured Associate Professor in the Department of Pharmacy Practice in the University's College of Pharmacy. She joined the faculty as an Assistant Professor in 1981, Pet. App. A18, and in 1987 she received tenure and was promoted to the rank of Associate Professor. *Id.* at A23. This dispute arose in 1992 when the Dean of the College selected Bertram Nicholas (a white American) to become Assistant Dean for Student Affairs in the College of Pharmacy, a position in which Park had expressed an interest. [1] *Id.* at A25.

Nicholas, as the district court ruled, was more qualified for the position than Park and was selected for the position because of these qualifications. *Id.* at A29-A30. Unlike Park, he held a doctorate in higher education administration. He also had prior experience as an Assistant Dean for Student Affairs at the Massachusetts College of Pharmacy, where he served six years as Chairman of the Department of Pharmacy. *Id.* at A25.

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[1] Under the College's Articles of Organization, assistant deans are appointed annually at the Dean's discretion after an informal selection process. Pet. App. A25; Trial Transcript 587. The positions are not full-time, but are assumed by full-time faculty members in addition to their other responsibilities for a small stipend. Thus, assistant dean assignments are restricted to current faculty members.

On September 23, 1992, Park filed a charge of discrimination with both the District of Columbia Department of Human Rights and Minority Business Development ("D.C. Department of Human Rights") and the EEOC alleging that the University discriminated against her on the basis of her sex and national origin in the selection of Nicholas as Assistant Dean for Student Affairs. *Id.* at A70-A73. Park alleged that the University, "on or about March 25, 1992 [the date she learned of Nicholas' selection] and continuing * * * subject[ed] me to differential treatment in terms and conditions of employment[] because of my sex (female) and national origin (Korean)." *Id.* at A70. The charge also stated generally that Park was "denied the opportunity for advancement in my career." *Id.* at A72. All of the particulars of her claim listed on the administrative charge related to the process by which Nicholas was selected to fill the assistant dean position. *Id.* at A71-A72.

On November 25, 1992, after the EEOC issued a Notice of Right to Sue, *id.* at A28-A29, Park filed her complaint in this case. D.C. Circuit Joint Appendix ("J.A.") 9. Like the administrative charge, the complaint alleged discrimination based on sex and national origin in the selection of Nicholas for the assistant deanship. *Id.* at 10-11. On December 11, 1992, Park filed an amended complaint, *id.* at 13, in which she further alleged an "atmosphere of sexual harassment" at the University. *Id.* at 15.

The district court granted the University's motion for partial summary judgment on Park's allegations of sexual harassment "on the grounds that the amended complaint contains no discrete claim of sexual harassment." Pet. App. A14. Following a four-day bench trial, the district judge to whom the case had been reassigned issued an opinion deciding liability issues. *Id.* at A16. He construed Park's amended complaint to allege three claims: (1) sexual harassment; (2)

discrimination on the basis of sex and national origin in the nonselection of Park as Assistant Dean for Student Affairs; and (3) "[a]n on-going pattern of discrimination against [Park] based on her sex *and* national origin which created a hostile work environment." *Id.* at A17 (emphasis in original). It was only at this time -- after trial -- that the University learned of the court's view that this case involved a national-origin hostile work environment claim. Even though Park's EEOC charge challenged only her nonselection as assistant dean, the court held, without any explanation or analysis, that Park had exhausted her administrative remedies with respect to all three of the claims that it believed were stated in her amended complaint. *Id.* at A28-A29.

The court ruled against Park on two of the three claims. The sexual harassment claim, it held, failed because it had already been dismissed. *Id.* at A29. The court also ruled against Park on her claim that the selection of Nicholas to be Assistant Dean for Student Affairs was discriminatory. It concluded that the University "had a legitimate and nondiscriminatory reason" for the decision: "Dr. Nicholas was better qualified than [Park] in terms of education and experience for the assistant deanship." *Id.* at A30. Park did not carry her ultimate burden of persuading the court that the University's "proffered reason was not the true reason for the employment decision and that she was intentionally discriminated against." *Id.* (citing *St. Mary's Honor Ctr.* v. *Hicks*, 509 U.S. 502 (1993)).

With respect to the purported hostile work environment claim, the court did not find the existence of a hostile environment based on Park's sex. It did rule, however, that Park was subjected to national origin harassment at the University that created a hostile work environment, and awarded damages. [2]

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[2] In making a damages determination, the district court expressly considered conduct predating the November 21, 1991 effective date of the 1991 Civil Rights Act, J.A. 45-49, notwithstanding this

The court of appeals reversed in an opinion by Judge Sentelle, joined by Judge Wald and Judge Silberman. The court held that Park had "failed to exhaust her administrative remedies at the EEOC for the hostile work environment claim." Pet. App. A4. Citing decisions from the Fourth and Seventh Circuits, and adopting the very standard Park urged (Brief for Appellee 22), the court of appeals noted that a Title VII lawsuit is limited in scope to claims that are reasonably related to, and would reasonably be expected to grow out of, the plaintiff's EEOC charge. *Id.* at A4-A5. Park's administrative charge, however, "did not express or even hint at a national origin hostile work environment claim," *id.* at A5, and "lack[ed] any factual allegations supporting such a claim." *Id.* at A7. It made no reference to the various actions that the district court found to constitute a hostile work environment. *Id.* Rather, it focused exclusively on the specific decision involving the assistant dean position, *see id.* at A5-A7 (quoting EEOC charge) -- a decision the district court found was "legitimate and nondiscriminatory." *Id.* at A30. Accordingly, "[b]ecause Park's EEOC charge contained no claims or factual allegations that could reasonably be expected upon investigation to lead to a hostile work environment claim," the court held that "she failed to exhaust her administrative remedies for such a claim at the EEOC," and "[h]er civil claim for a hostile work environment is therefore barred." *Id.* at A8-A9. [3]

Court's holding in *Landgraf* v. *USI Film Products*, 114 S. Ct. 1483 (1994), that Title VII plaintiffs cannot recover compensatory damages for conduct occurring before that date.

[3] The University also argued on appeal that the district court erred in holding the University liable for conduct occurring outside the statutory limitations period, in determining that the conduct of which Park complained constituted a hostile work environment, and in awarding damages based to a significant extent on conduct that occurred long before the effective date of the 1991 Civil Rights Act, in violation of principles described by this Court in *Landgraf*.

REASONS FOR DENYING THE WRIT

I. THE COURT OF APPEALS DID NOT ADOPT A "NEW RULE" OF EXHAUSTION, BUT RATHER APPLIED THE SETTLED RULE TO THE FACTS OF THIS CASE

An EEOC charge is a prerequisite to a lawsuit under Title VII. 42 U.S.C. § 2000e-5(b), (e), (f); *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 47 (1974). [4] The purpose of this exhaustion requirement is to give the employer notice of the conduct about which the employee is aggrieved and to afford the employer and the EEOC an opportunity to resolve the dispute. *Id.* at 44; *Laffey* v. *Northwest Airlines, Inc.*, 567 F.2d 429, 472 n.325 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978).

In determining whether a plaintiff has exhausted her administrative remedies, lower courts have uniformly held that a Title VII lawsuit is "limited by the charge filed with the EEOC and the investigation which can reasonably be expected to grow out of that charge." *Powers* v. *Grinnell Corp.*, 915 F.2d 34, 38 (1st Cir. 1990) (internal quotation marks omitted). [5] Thus, the universal rule is that Title VII claims are cognizable only if they are "'like or reasonably related to the allegations

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Because of its disposition of the case, the court of appeals did not consider these arguments, Pet. App. A9, which provide separate grounds for sustaining the court of appeals' judgment and therefore further counsel against granting review in this case.

[4] Title VII and the District of Columbia Human Rights Act require charges filed with, respectively, the EEOC and the D.C. Department of Human Rights to be served on the charged party. *See* 42 U.S.C. § 2000e-5(b); D.C. Code § 1-2545(a).

[5] *Accord, e.g.*, *Miller* v. *International Tel. & Tel. Corp.*, 755 F.2d 20, 23-24 (2d Cir.), *cert. denied*, 474 U.S. 851 (1985); *Chisolm* v. *United States Postal Serv.*, 665 F.2d 482, 491 (4th Cir. 1981); *Ostapowicz* v. *Johnson Bronze Co.*, 541 F.2d 394, 398-399 (3d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977). *See* Pet. 9 (citing cases).

of the [administrative] charge and grow[] out of such allegations.'" *Jenkins* v. *Blue Cross Mut. Hosp. Ins., Inc.*, 538 F.2d 164, 167 (7th Cir.) (in banc) (quoting *Danner* v. *Phillips Petroleum Co.*, 447 F.2d 159, 162 (5th Cir. 1971)), *cert. denied*, 429 U.S. 986 (1976). Petitioner in fact recognizes that the courts have been unanimous in applying these standards to exhaustion issues. Pet. 9-11. *See also* Brief for Appellee 22 ("We agree with appellant that the scope of a title VII lawsuit is 'limited by the charge filed with the EEOC and the investigation which can reasonably be expected to grow out of that charge'") (quoting Brief for Appellant 17).

These settled standards for determining the scope of the administrative charge for exhaustion purposes are *precisely* the standards applied by the court of appeals below. Quoting the Seventh Circuit's decision in *Cheek* v. *Western & Southern Life Ins. Co.*, 31 F.3d 497, 500 (7th Cir. 1994), the D.C. Circuit held that "[a] Title VII lawsuit following the EEOC charge is limited in scope to claims that are 'like or reasonably related to the allegations of the charge and growing out of such allegations.'" Pet. App. A4-A5. Quoting the Fourth Circuit's decision in *Chisolm*, the court of appeals held that "[a]t a minimum, the Title VII claims must arise from 'the administrative investigation that can reasonably be expected to follow the charge of discrimination.'" Pet. App. A5.

Applying these settled standards to the facts of this case, the court of appeals determined that Park had not exhausted her administrative remedies as to the claim of hostile work environment on which she had prevailed in the district court. As we explain more fully in Part II, the decision was plainly correct. More importantly for present purposes, it represents no more than the application of settled law to the facts of this case, as petitioner herself recognized below. *See* Brief for Appellee 22 ("What can 'reasonably be expected' [to grow out of the EEOC charge] necessarily turns on the

facts of the particular case"). The decision below therefore provides no occasion for the exercise of this Court's certiorari jurisdiction.

Petitioner charges that the court of appeals adopted a "new rule negating the well-founded rule heretofore followed in all circuits." Pet. 8. Not so. Certainly nothing on the face of the court's opinion supports the claim that the D.C. Circuit has suddenly departed from well-settled standards applicable to the exhaustion requirement. Petitioner recognizes as much when she observes that this "new rule" was "neither fully articulated nor rationalized by the Court below." *Id.* The reason for this "failure" is plain: the court of appeals -- relying expressly on the standards Park urged -- simply applied settled law to the facts of this case and therefore had no need to articulate or rationalize a "new rule."

Petitioner claims that "[o]ther courts of appeal reviewing district court determinations of exhaustion have been clear that the claim in district court need not have been pled, or evidence supporting it have been set out, in the preceding EEOC charge." Pet. 13. We agree. What these courts require, like the court below, is only that the claim must be set out in the EEOC charge *or* could reasonably be expected to grow out of the charge. *See, e.g.*, *Powers*, 915 F.2d at 38. The court of appeals did not require that the claim appear on the face of the administrative charge, but rather applied the more expansive inquiry to petitioner's claim. Pet. App. A4-A5, A8-A9. Petitioner's claim simply failed that test.

Petitioner's real complaint, therefore, is with the result of the court's application of undisputed principles of law. That factbound complaint, however, provides no "compelling" issue requiring this Court's review. S. Ct. Rule 10. In any event, as explained more fully below, the court of appeals was correct in its determination that petitioner had failed to preserve a national origin hostile work environment claim.

II. THE DECISION BELOW WAS CORRECT

"The requirement of some specificity in a charge is not a 'mere technicality.'" *Rush* v. *McDonald's Corp.*, 966 F.2d 1104, 1111 (7th Cir. 1992). That is because allowing a lawsuit "to encompass allegations outside the ambit of the predicate EEOC charge would circumvent the EEOC's investigatory and conciliatory role as well as deprive the charged party of notice of the charge, as surely as would an initial failure to file a timely EEOC charge." *Babrocky* v. *Jewel Food Co. & Retail Meatcutters Union, Local 320*, 773 F.2d 857, 863 (7th Cir. 1985).

In construing a charge, "the crucial element * * * is the *factual* statement contained therein. Everything else entered on the form is, in essence, a mere amplification of the factual allegations." *Sanchez* v. *Standard Brands, Inc.*, 431 F.2d 455, 462 (5th Cir. 1970) (emphasis in original). The factual portion of Park's administrative charge described a single personnel decision: the selection of Nicholas, instead of her, to be Assistant Dean for Student Affairs. Even the most charitable reading of Park's narrative cannot transform the charge into a hostile environment claim, nor would the charge reasonably lead the agency to investigate such a claim.

Nothing in the charge even remotely suggests a workplace "permeated with discriminatory intimidation, ridicule, and insult * * * sufficiently severe or pervasive to alter the conditions" of Park's employment. *Harris* v. *Forklift Systems, Inc.*, 510 U.S. 17, 114 S. Ct. 367, 370 (1993) (internal quotation marks omitted). As noted, the charge focuses completely on the selection of Nicholas rather than Park to fill the assistant dean position. While Park now claims that an investigation of that charge would have led the EEOC to discover a variety of allegedly discriminatory acts, the acts of which she now

complains are far removed from the decision she described in her complaint. A reasonable investigation of *that* decision would plainly not have led the EEOC to a wide-ranging probe of the University's more than decade-long relationship with Park. Rather, it would have revealed, as the district court found, that the University selected the most qualified person to serve as assistant dean, and did not discriminate against Park in doing so. That would have ended the matter.

Park's contention (Pet. 12) that the EEOC would have uncovered the unrelated, additional facts that the district court later found to comprise a hostile environment -- facts that included not only different personnel actions widely spaced in time, but also different decisionmakers, and different types of conduct -- is sheer speculation, and was properly rejected on the facts by the court of appeals. Permitting such hindsight to control the scope of the administrative charge would effectively negate the requirement of some relationship between the administrative charge and the allegations made in court and replace it with the assumption that *any* administrative complaint about discrimination is sufficient to exhaust all subsequent charges -- no matter how unrelated to the initial charge. That is not the law.[6]

As the court of appeals observed, Pet. App. A7-A8, in similar cases where an employee's administrative charge challenged only a discrete employment decision, courts have consistently dismissed subsequent lawsuits alleging harassment or a hostile work environment as

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[6] *See, e.g., Cheek* v. *Western & Southern Life Ins. Co.*, 31 F.3d at 501 (Allegations raised in an administrative charge and in litigation must be reasonably related; "This means that the EEOC charge and the complaint must, at minimum, describe the *same conduct* and implicate the *same individuals*") (emphases in original); *Allen* v. *Denver Pub. Sch. Bd.*, 928 F.2d 978, 984 (10th Cir. 1991) (administrative charge alleging 1986 disciplinary action and 1988 discharge did not permit court challenge to 1979 nonpromotion).

beyond the scope of the charge. *See, e.g., Rush*, 966 F.2d at 1110-12 (EEOC charge alleging discriminatory discharge failed to preserve subsequent court claim of racial harassment); *Riley* v. *Technical & Management Servs. Corp.*, 872 F. Supp. 1454, 1459 (D. Md. 1995) (charge alleging discriminatory wages and discharge did not permit later hostile work environment claim), *aff'd*, 79 F.3d 1141 (4th Cir. 1996) (Table); *Berman* v. *Washington Times Corp.*, 129 Lab. Cas. ¶ 57,835 (D.D.C. 1994) (charge alleging sex discrimination based on inadequate work assignments, unfair performance evaluations, suspension, and demeaning treatment in front of complainant's co-workers did not permit later claim of sex harassment). [7]

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[7] *Accord, e.g., Tart* v. *Hill Behan Lumber Co.*, 31 F.3d 668, 672-673 (8th Cir. 1994) (charge alleging discriminatory discharge insufficiently related to subsequent court claim of racial harassment); *Prizevoits* v. *Indiana Bell Tel. Co.*, 882 F. Supp. 787, 791-792 (S.D. Ind. 1995) (charge of discriminatory discharge insufficiently related to subsequent claim of sexual harassment), *appeal dismissed*, 76 F.3d 132 (7th Cir. 1996); *Reese* v. *Goodyear Tire & Rubber Co.*, 859 F. Supp. 1381, 1387 (D. Kan. 1994) (charge alleging discriminatory discharge and retaliation did not permit later claim of racial harassment); *Cabiness* v. *YKK (USA), Inc.*, 859 F. Supp. 582, 586-587 (M.D. Ga. 1994) (charge alleging discriminatory discharge not reasonably related to later claim of hostile environment); *Revis* v. *Slocomb Indus., Inc.*, 814 F. Supp. 1209, 1219 (D. Del. 1993) (charge challenging disciplinary write-ups and suspension did not permit later claim of racially hostile work environment); *Nicol* v. *Imagematrix, Inc.*, 767 F. Supp. 744, 752-755 (E.D. Va. 1991) (charge alleging termination on basis of pregnancy did not permit later hostile work environment claim); *Ghahramani* v. *BASF Corp.*, 755 F. Supp. 708, 710-711 (M.D. La. 1991) (charge alleging discriminatory demotion, several denials of promotion, and discharge did not permit subsequent claim of racial harassment); *Torriero* v. *Olin Corp.*, 684 F. Supp. 1165, 1170 (S.D.N.Y. 1988) (charge alleging discrimination in promotion, transfer, and termination insufficiently related to later claim of sex harassment); *Bartha* v. *Service Sys. Corp.*, 44 Fair Empl. Prac. Cas. (BNA) 1765 (W.D.N.Y. 1987) (charge alleging discriminatory wages and termination did not permit subsequent claim of sex harassment).

Nor did any of the more general statements about discrimination in Park's charge suffice to preserve a hostile environment claim. For all that appears, those statements were simply efforts to characterize the specific incident raised in the charge; they provided no notice that other conduct might be at issue. In *Rush*, relied on by the D.C. Circuit below (Pet. App. A7), the Seventh Circuit held that general claims of discriminatory treatment are insufficient to permit an employee's subsequent court complaint alleging racial harassment:

> [T]he goals behind the requirement of prior resort to administrative relief would be frustrated if the filing of a general charge with the EEOC would open up the possibility of judicial challenges to any related conduct that took place in connection with the employment relationship. * * * Some detail, beyond a statement that "I believe I have been discriminated against because of [a protected characteristic]" is necessary to allow the agency to perform its statutory duty. [966 F.2d at 1110-11.]

See also Baltzer v. *City of Sun Prairie/Police Dep't*, 725 F. Supp. 1008, 1019 (W.D. Wis. 1989); *Pritchett* v. *General Motors Corp.*, 650 F. Supp. 758, 762 (D. Md. 1986).

Particularly when read together with the specific allegations about the assistant dean position, Park's general allegations of discrimination were wholly insufficient to advise the agency and the University that Park might also be making a claim of national origin harassment based on other conduct that occurred over a period of many years.[8] The agency had no opportunity

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[8] Indeed, Park's identification of the date of discrimination in her charge as March 25, 1992 -- the date on which she claims she learned of Nicholas' selection as assistant dean, J.A. 54 -- makes clear that the charge is addressed to that particular decision, and not to events that occurred years earlier.

to investigate the merits of such a claim, and the University had no opportunity to attempt conciliation. Indeed, that the issue of national origin harassment emerged in this case as an afterthought is underscored by Park's initial court pleadings: the original complaint, like the EEOC charge, made no reference to a hostile environment and challenged only the decision regarding the assistant deanship, and the references to harassment and hostile environment in the amended complaint all specify that the alleged conduct was based on Park's *sex*, not her national origin.[9]

For these reasons, the court of appeals' holding that Park failed to exhaust a claim of hostile work environment based on national origin is clearly correct.

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[9] Petitioner apparently does not take issue with the D.C. Circuit's holding that the unsworn "pre-complaint questionnaire" that Park submitted to the D.C. Department of Human Rights over a month before filing her formal charge -- but never served on the University -- cannot be considered part of the formal charge. Pet. App. A8. This holding too is consistent with the decisions of other lower courts. *Hodges* v. *Northwest Airlines, Inc.*, 990 F.2d 1030, 1032 (8th Cir. 1993) (unsworn administrative intake questionnaire "did not constitute a valid charge under Title VII"); *Early* v. *Bankers Life & Cas. Co.*, 959 F.2d 75, 80 (7th Cir. 1992) ("To treat Intake Questionnaires willy-nilly as charges would be to dispense with the requirement of notification of the prospective defendant"); *Clemmer* v. *Enron Corp.*, 882 F. Supp. 606, 610 (S.D. Tex. 1995); *Buffington* v. *General Time Corp.*, 677 F. Supp. 1186, 1193 (M.D. Ga. 1988). Moreover, that Park may have complained to University officials about alleged sex harassment (Pet. 5), of course, did not satisfy her statutory obligation to notify both the University and the EEOC that she might bring a claim of national origin harassment.

CONCLUSION

For all of the foregoing reasons, the petition should be denied.

Respectfully submitted,

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